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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

WASHINGTON, DC

WHEN: June 25, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AC59

Federal Old-Age, Survivors, and Disability Insurance Supplemental Security Income for the Aged, Blind and Disabled; Representation of Parties—Suspension and Disqualification of Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Final Rules.

SUMMARY: These final rules amend the regulations governing the suspension and disqualification of persons who represent claimants in dealings with the Social Security Administration (SSA). The regulations update organizational designations and establish the framework for more efficient processing of possible violations of our rules. The regulations also require that a panel of three Appeals Council members, rather than a single member, will consider a request for review of an administrative law judge's (ALJ) decision on the issue of suspension or disqualification of a representative. The procedures for initiating and processing complaints are largely unchanged but the regulations designate the Deputy Commissioner for Programs, or his or her designee, as the official responsible for issuing complaints.

EFFECTIVE DATE: These final regulations are effective May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (301) 965-1769.

SUPPLEMENTARY INFORMATION: On February 1, 1990, we published a notice of proposed rulemaking (NPRM) to provide that, when it appears that a person who represents claimants in dealings with SSA has violated one of our rules, SSA's Associate Commissioner for Hearings and Appeals, or his or her designee, will initiate proceedings to suspend or disqualify the representative. This differed from the regulations then in effect, which provided that the Deputy Commissioner (Operations) or the Director (or Deputy Director), Office of Insurance Programs, would prepare a notice containing a statement of charges that constituted the basis for a proceeding against the representative.

The NPRM also provided that a request for review of the decision issued by the ALJ designated to act as hearing officer would be decided by a panel of three Appeals Council members rather than a single member, as is presently the case. In addition, the NPRM updated organizational designations and clarified the functional responsibility of the designated officials.

Final Regulations

The final regulations:

1. Update organizational designations and establish a framework for more efficient processing of matters involving the possible suspension or disqualification of a representative;
2. Authorize the establishment of a panel of three Appeals Council members who will consider a request for review of an ALJ's decision on the issue of suspension or disqualification of a representative, and
3. Provide that the Deputy Commissioner for Programs, or his or her designee, will initiate proceedings to suspend or disqualify a representative.

The only substantive change in these final regulations from the NPRM is that the Deputy Commissioner for Programs, or his or her designee, will initiate proceedings to suspend or disqualify the representative, rather than the Associate Commissioner for Hearings and Appeals, or his or her designee.

The Deputy Commissioner for Programs has direct authority over the Office of Hearings and Appeals. That office will investigate alleged violations and forward its findings and recommendations to the Deputy Commissioner for Programs who will independently decide whether to issue a notice of charges against a representative. The Deputy Commissioner for Programs will also consider any answer filed in response to the complaint, and determine whether the complaint should be withdrawn. If the complaint is not withdrawn, the Deputy Commissioner for Programs will request the Associate Commissioner for Hearings and Appeals to designate an ALJ who will serve as hearing officer to hold a hearing on the charges. The Office of Hearings and Appeals' Special Counsel Staff which investigated the alleged violations, will represent the Deputy Commissioner for Programs during all phases of the proceeding.

These procedures will not only have the advantages of efficiency and economy, but will also provide for direct review and oversight of the activities of the Office of Hearings and Appeals by the senior SSA official responsible for overall management of this area of the program. Moreover, the process will allow SSA personnel familiar with the facts to represent the Agency during proceedings on charges and thereby eliminate the duplication of effort that would result from separation of the investigative and prosecutorial functions.

Public Comments and Responses

We received 19 letters in response to the NPRM containing comments from attorneys, claimant representatives, private individuals, and legal aid organizations. We have carefully considered all the comments and, below, have attempted to address all of the significant comments we received, including those that resulted in changes to the rules and those that were rejected. For ease of reference we have grouped the comments according to the issues raised.

Comment: All of the commenters objected in some form to the consolidation within the Office of Hearings and Appeals of all phases of the process involved in the suspension or disqualification of representatives. Some of the commenters believed that the proposed change would violate statutory provisions or deny the representatives due process of law. Each of the commenters cited several of the following factors as representing actual or apparent conflicts of interest because of the perception that there was intermingling of the investigative,

prosecutorial, and adjudicative functions:

1. The Office of Hearings and Appeals would conduct the investigation of suspected violations of the rules governing representatives' conduct;

2. The Associate Commissioner for Hearings and Appeals would issue the notice of charges against a representative;

3. The Associate Commissioner for Hearings and Appeals would assign an ALJ employed by the Agency to conduct the hearing and issue a decision on the charges;

4. Personnel assigned to the Office of Hearings and Appeals would represent the Agency in proceedings to suspend or disqualify representatives;

5. Both the representative and the Office of Hearings and Appeals personnel who prosecuted the charges filed against the representative could request review of the decision issued by the ALJ; and,

6. The Appeals Council, which is a part of the Office of Hearings and Appeals, would consider the request for review of the ALJ's decision.

Response: To avoid even the appearance of impropriety or unfairness, we have modified the proposed regulations to indicate that the Deputy Commissioner for Programs will be the official with the authority to issue notices of charges against representatives. The Deputy Commissioner for Programs has authority over employees working at the Office of Hearings and Appeals, as well as several other components within SSA, with responsibility for formulating the regulations and policies by which SSA administers its benefit programs. As such, the Deputy Commissioner for Programs has the knowledge necessary to evaluate whether a representative has committed a violation with regard to any Social Security program. Further, the broad responsibilities and wider scope of authority of the Deputy Commissioner for Programs emphasize the gravity of a decision to issue a notice of charges. Assigning this authority to the Deputy Commissioner for Programs retains the function at its current organizational placement level.

The propriety of a system in which both investigation/prosecution and adjudication are the responsibility of a single entity, was settled by the United States Supreme Court in *Withrow* v. *Larkin*, 421 U.S. 35 (1975). In *Withrow*, a state medical board which investigated physician misconduct was also empowered to prosecute and adjudicate in an adversarial proceeding the issue of whether the physician's medical license should be suspended. The primary issue in the case was whether the combination of investigative and adjudicative functions within a single agency created an unconstitutional risk of bias in the adjudication. The Court advised that mere exposure to evidence obtained during an investigative procedure was insufficient, in itself, to impugn the fairness of the adjudicators at a later adversary proceeding. Without a showing to the contrary, adjudicators were assumed to be persons of "conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances" (421 U.S. at 55). The Court found that the medical board's practice of receiving investigative results, approving the filing of charges or formal complaints, and participating in the ensuing hearings was "very typical" of administrative agencies, and held that such procedures do not violate the Administrative Procedure Act or due process of law.

The American Bar Association has also approved the use of such systems for regulating professional misconduct, as indicated by its formulation and adoption of the model Standards for Lawyer Discipline and Disability Proceedings.

In its 1984 Survey of Lawyer Disciplinary Procedures in the United States, the American Bar Association revealed that lawyer disciplinary procedures in the majority of jurisdictions (36) utilized disciplinary counsel to perform all of the following functions:

1. Screening information;
2. Investigating allegations;
3. Recommending dispositions;
4. Prosecuting matters at all stages;
5. Investigating facts relating to petitions for reinstatement; and
6. Maintaining records of the agency's operations and individual matters processed by the agency.

Accordingly, it is a widely utilized and accepted organizational concept to avoid segmentation of the investigative and prosecutorial functions in dealing with matters involving professional conduct.

The Social Security Act and the Administrative Procedure Act also permit the investigative, prosecutorial, and adjudicative functions to be combined within the same agency, providing that adjudicators are able to function independently, outside the direction or supervision of the agency employees involved in investigative and prosecutorial matters. 42 U.S.C. 405 and 1383(c)(1) and 5 U.S.C. 554(d). The Attorney General's Manual on the Administrative Procedure Act, United States Department of Justice (1947), commented on this required separation of functions, noting that "[a]s a practical matter this means that an agency's hearing examiners [now ALJs] should be placed in an organizational unit apart from those to which investigative and prosecuting personnel are assigned * * *." Attorney General's Manual on the Administrative Procedure Act at 55–56.

The Agency's organizational structure is consistent with the Court's holding in *Withrow* and satisfies the concerns regarding separation of function noted above. ALJs and Appeals Council members exercise independent authority to adjudicate complaints and are assigned to components distinct and separate from the Office of Hearings and Appeals Special Counsel Staff personnel engaged in investigative and prosecutorial functions on behalf of the Deputy Commissioner for Programs.

We believe that the final rules satisfy procedural safeguards and offer a fair and equitable process for addressing circumstances which, if established, warrant suspending or disqualifying a person from representing Social Security claimants.

Comment: Some of the commenters objected to authorizing the Associate Commissioner for Hearings and Appeals to assign ALJs to act as hearing officers for suspension/disqualification proceedings. See §§ 404.1765(b) and 416.1565(b), as revised. One commenter characterized this authority as the ability to choose a "hanging judge."

Response: ALJs are assigned to cases in rotation so far as practicable. In this type of situation, however, it is not practicable to employ a strict rotation because of variable factors such as: The availability of the ALJ; office workload; individual docket considerations; and the practice of choosing an ALJ stationed outside the geographic area in which the charged representative resides, who does not normally adjudicate cases in which the representative has an interest. Thus, practical concerns mandate a discretionary decision rather than strict mechanical rotation in designating a hearing officer, and officials within the Office of Hearings and Appeals are capable of making this determination.

In addition, the regulations provide a remedy when the representative or any party to the hearing believes that the ALJ who has been assigned to the case is prejudiced against or partial to either party, or has any interest in the matter. The party may file an objection that will be considered by the ALJ. If the ALJ withdraws, another ALJ will be

appointed. If the ALJ refuses to withdraw, the party may upon issuance of the decision present his or her objections to the Appeals Council as a reason why the decision should be revised or assigned to another ALJ for a new hearing. See §§ 404.1765(b) and 416.1565(b), as revised. Accordingly, we do not believe that the authority to designate the ALJ to hear the complaint should be removed from the Associate Commissioner for Hearings and Appeals.

Comment: One commenter noted that the Office of Hearings and Appeals does not have authority over applications for supplemental security income benefits, questionable retirement issues, overpayment issues, and continuing disability reviews and thus would not be in a position to monitor the behavior of representatives appearing on behalf of claimants who have problems in these areas.

Response: We do not agree. Although these issues are often resolved without the need for an ALJ hearing, they clearly may be decided by an ALJ or the Appeals Council. Since most claimants do not obtain representation until review by an ALJ or Appeals Council is requested, most violations of our rules by representatives occur when the claim is being considered by an ALJ or the Appeals Council. Therefore, the Office of Hearings and Appeals is able to identify possible violations, recognize multiple offenders, and undertake the investigation and prosecution of these matters.

Comment: Some commenters were generally critical of the conduct and attitudes of ALJs and expressed concern that the proposed "rules" were not adequately explained, thus allowing ALJs to charge representatives arbitrarily with violations. This in turn, the commenters maintained, would inhibit aggressive representation.

Response: We do not agree. The regulations set forth at §§ 404.1740 and 416.1540 as well as §§ 404.1745 and 416.1545 as amended herein, contain the specific rules governing representatives. In addition, §§ 404.1705 and 416.1505 provide the requisite qualifications for a person to serve as a representative. The above cited regulations provide clear and specific notice of conduct which may lead to a suspension or disqualification.

Apparently, the commenters thought that the proposed regulations, if adopted, would create a new process or establish new procedures permitting ALJs to suspend or disqualify representatives arbitrarily. This is not the case. Other than authorizing the Deputy Commissioner for Programs in place of the Deputy Commissioner for Operations or the Director or Deputy Director for the Office of Insurance Programs to issue notices of charges, the procedures essentially are not changed by these final rules. As before, ALJs may bring allegations of misconduct to the attention of appropriate Agency officials, but they have no authority under either the amended or prior regulations to issue formal charges or to suspend or disqualify representatives without following the procedures prescribed by the regulations.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.773 and 93.774, Medicare; 93.802–93.805 Social Security; and 93.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedures; Aged, Blind, Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: December 28, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 406, and 1302.

2. The introductory paragraph in § 404.1745 is revised to read as follows:

§ 404.1745 What happens to a representative who breaks the rules.

The Deputy Commissioner for Programs, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

* * * * *

3. Paragraphs (a), (d) and (e)(2) of § 404.1750 are revised to read as follows and the cross-reference in paragraph (f) of § 404.1750 is changed from § 404.1765(f) to § 404.1765(g):

§ 404.1750 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Deputy Commissioner for Programs, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

* * * * *

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

§ 404.1760 [Removed]

4. Section 404.1760 is removed.

5. In § 404.1765, paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

§ 404.1765 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

6. In § 404.1765, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

§ 404.1765 Hearing on charges.

* * * * *

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

* * * * *

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Programs, or his or her designee, shall also be a party to the hearing.

7. Paragraph (a) (3) of § 404.1770 is revised to read as follows:

§ 404.1770 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

* * * * *

8. A new § 404.1776 is added to read as follows:

§ 404.1776 Assignment of request for review of the hearing officer's decision.

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the Appeals Council none of whom shall be the Chair of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chair of the panel.

9. Paragraph (e) of § 404.1790 is revised to read as follows:

§ 404.1790 Appeals Council's decision.

* * * * *

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 404.1799 are revised to read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

* * * * *

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner for Programs.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(d) of the Social Security Act; 42 U.S.C. 1302 and 1383(d).

2. The introductory paragraph in § 416.1545 is revised to read as follows:

§ 416.1545 What happens to a representative who breaks the rules.

The Deputy Commissioner for Programs, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

* * * * *

3. Paragraphs (a), (d) and (e)(2) of § 416.1550 are revised to read as follows and the cross-reference in paragraph (f) of § 416.1550 is changed from § 416.1565(f) to § 416.1565(g):

§ 416.1550 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Deputy Commissioner for Programs, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

* * * * *

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

* * * * *

§ 416.1560 [Removed]

4. Section 416.1560 is removed.

5. In § 416.1565 paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

§ 416.1565 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

6. In § 416.1565, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

§ 416.1565 Hearing on charges.

* * * * *

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

* * * * *

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Programs, or his or her designee, shall also be a party to the hearing.

* * * * *

7. Paragraph (a)(3) of § 416.1570 is revised to read as follows:

§ 416.1570 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

* * * * *

8. A new § 416.1576 is added to read as follows:

§ 416.1576 Assignment of request for review of the hearing officer's decision.

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the

Appeals Council none of whom shall be the Chair of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chair of the panel.

9. Paragraph (e) of § 416.1590 is revised to read as follows:

§ 416.1590 Appeals Council's decision.

* * * * *

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 416.1599 are revised to read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

* * * * *

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner for Programs.

[FR Doc. 91–12565 Filed 5–28–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Freedom of Information and Privacy Acts; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document transfers 32 CFR parts 284 and 285 from subchapter M to subchapter O and revises the headings of subchapters N and O in order to place the Freedom of Information Program and the Privacy Act Program parts in separate subchapters.

EFFECTIVE DATE: May 29, 1991.

ADDRESSES: Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. L. Bynum, telephone (703) 697–4111.

Accordingly, by the authority of 5 U.S.C. 552 and 552a, title 32, chapter I, of the Code of Federal Regulations is amended as follows:

PARTS 284 and 285—[AMENDED]

1. Subchapter M is amended by transferring parts 284 and 285 to subchapter O.

2. Subchapter N, which is currently reserved is amended by revising the heading to read as follows:

SUBCHAPTER N—PRIVACY PROGRAM—[RESERVED]

3. Subchapter O, consisting of newly transferred parts 284 and 285, is amended by revising the heading to read as follows:

SUBCHAPTER O—FREEDOM OF INFORMATION ACT PROGRAM

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–12592 Filed 5–28–91; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3956–6]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving an amendment to the State of Washington sulfur dioxide emission limitation as a revision to the Washington state implementation plan (SIP). This amendment was submitted to EPA on April 28, 1983, by the Washington Department of Ecology (WDOE) to satisfy the requirements of section 110 of the Clean Air Act (hereinafter the Act). This amendment clarifies the averaging time for the sulfur dioxide emission limitation in WAC 173–400–040(6).

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, Docket #10A–88–4, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Air Programs, Washington Department of Ecology, 4226—6th Avenue SE., Rowe Six, Building #4, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, telephone: (206) 553–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1979, the State of Washington Department of Ecology (WDOE) submitted a general emission limitation for sulfur dioxide as a revision to the Washington state implementation plan (SIP). On June 5, 1980 (45 FR 37821), EPA approved this emission limitation on the condition that WDOE submit source test and compliance procedures for enforcing the emission limitation. On July 31, 1980, and January 13, 1981, WDOE submitted source test methods and compliance procedures as revisions to the Washington SIP. EPA approved these revisions to the Washington SIP on September 14, 1981 (45 FR 45607).

On April 28, 1983, WDOE submitted amendments to the regulation for control of sulfur dioxide emissions (WAC 173–400–040(6)) as a revision to the Washington SIP. These amendments clarified the averaging time for the sulfur dioxide emission limitation, and updated, rearranged, and recodified the regulation. On November 7, 1988 (53 FR 44911), EPA proposed to approve the portion of the amendments which clarified the averaging time of the sulfur dioxide emission limitation. However, EPA proposed to take no action on the remaining provisions which provided for the granting of an exception to the general emission limitation and furthermore, proposed to rescind its June 5, 1980, approval of the exception provisions.

II. Response to Comments

EPA received numerous comments on its proposal from state and local air pollution authorities, the National Park Service, and the owners of a large coal-fired power plant. In general, the comments fall into two general categories—the appropriateness of a 60-minute averaging time, and the need for the exception provisions.

The WDOE objected to EPA's proposed disapproval of the exception provision and requested that EPA either withhold action on the submitted revision or approve the revision in its entirety. The WDOE indicated that it was aware of EPA's concerns with the exception provisions and requested an opportunity to revise its regulations through either an informal process or pursuant to a formal SIP call under section 110(a)(2)(H).

EPA agrees that its proposal to rescind the previous approval of the exception provisions in the Washington SIP was premature. Congress provided a process in section 110(a)(2)(H) for EPA to identify deficiencies within SIPs and to provide an opportunity for states to correct such deficiencies. While EPA is not changing its position on the approvability of the exception provisions in the proposed revisions or the current Washington SIP, EPA is not disapproving either sets of exception provisions at this time. Rather, EPA is taking no action on the proposed revisions, thereby leaving the currently approved exception provisions in place. However, EPA intends, in the near future, to make a finding of SIP deficiency pursuant to section 110(a)(2)(H), requiring the revision of the exception provisions.

WDOE emphasized the state's prerogative to establish emission limits and grant exceptions thereto, so long as the requirements of the Clean Air Act were met. Furthermore, the WDOE acknowledged that changes to previously established SIP emission limits, granted through the exception process, would need to be submitted to, and approved by, EPA as a revision to the Washington SIP, even if EPA has approved the exception provisions themselves. In order to clearly indicate the need for case-by-case EPA approval of exceptions granted pursuant to this, or any other exception provision in the Washington SIP, EPA has added a new section to 40 CFR part 52, subpart WW.

The Southwest Air Pollution Control Authority (SWAPCA), a local air pollution control authority in southwest Washington objected to EPA's proposed approval of the 60-minute averaging time and proposed disapproval of the exception provision on a number of grounds, and urged EPA to remand the regulations to the state for reconsideration. First, SWAPCA indicated that the impact of the addition of the 60-minute averaging time was not adequately discussed during the state public hearing process. However, there is no requirement that a portion of a proposed revision be specifically discussed during the hearing process, if it is not raised by a commentor. As such, EPA finds that the state's public hearing process on this revision was fully adequate.

Second, SWAPCA pointed out a potential conflict between the averaging time specified in the regulation and a table in the Washington SIP which describes the applicable source test methods. Since the table is not regulatory, and is descriptive only, EPA believes that deference must be given to the regulatory provisions in any apparent conflict. However, EPA has taken note of this potential conflict and will request that WDOE revise the table, as appropriate, at the next opportune update of their SIP.

Third, SWAPCA argued that EPA should not approve the 60-minute averaging time because WDOE has not demonstrated that the sulfur dioxide emission limit is adquate to attain and maintain the national ambient air quality standards. However, as described above, the revision only clarifies the averaging time of the existing emission limitation. Since there are currently no designated sulfur dioxide nonattainment areas in Washington, nor are there any areas for which EPA has found the current SIP emission limitations to be substantially deficient to attain and maintain the ambient standards, EPA finds that no demonstration is needed to support the approval of this technical amendment. However, SWAPCA's point regarding the ability of a volumetric concentration standard to ensure attainment and maintenance is well taken. EPA will consider this further in its next assessment of the Washington sulfur dioxide control program.

Finally, SWAPCA argued that the requirements of part C of the Act (prevention of signficant deterioration (PSD), visibility protection) only apply to new sources and not to existing sources such that an existing source which applies for an exception would not need to demonstrate compliance with PSD increments or visibility requirements. This comment, however, is contrary to the explicit language in part C of the Act and EPA regulations (40 CFR part 51, subparts I and P). As such, EPA maintains that exception provisions in the proposed revision and the current Washington SIP need to be revised.

The National Park Service supported EPA's proposed action, indicating the need for an enforceable and unambiguous emission limitation.

Seven of the owners of a large coal-fired steam electric generating plant in southwest Washington, and one of the owners of the adjacent coal mine, submitted comments objecting to EPA's proposed action.

The owners objected to EPA's proposed disapproval of the exception provisions as making the emission limitation more stringent than intended by the state. They contend that the intent of the current provision was to require compliance with the 1000 ppm, 60-minute average limitation only where feasible and to grant exceptions, through the exception provisions, where compliance was not feasible. By disapproving the exception provisions, EPA would be tightening the state's regulation by eliminating the means for revising the emission limit for situations where compliance was not feasible. As discussed above, EPA has decided not to disapprove the exception provisions at this time, leaving the currently approved exception provisions in place. However, as discussed above, EPA intends to make a finding pursuant to Section 110(a)(2)(H) that the existing exception provisions fail to meet all applicable requirements of the Clean Air Act and need to be revised.

The owners further contend that the addition of the 60-minute average is not simply a technical amendment to the current SIP but rather, could be interpreted as a tightening of the current provision. Therefore, EPA's finding that the amended regulation is functionally equivalent to the current SIP was erroneous and its rationale for proposing approval was flawed. However, as discussed above, the state of Washington's control strategy for sulfur dioxide is fully approved and there are currently no known problem areas. If, as the owners contend, this amendment is a tightening of the current SIP provisions, EPA would have no recourse but to approve it, since section 116 of the Clean Air Act allows states to adopt emission limitations which are more stringent than required by EPA. Furthermore, EPA's requirements for SIP emission limitations clearly state that an averaging time must be specified and such averaging time can be no longer than that of any short-term ambient air quality standard. This amendment to the Washington sulfur dioxide emission standard satisfies these requirements and is therefore approvable as a revision to the Washington SIP.

The owners also urge EPA to remand the proposed revision to the WDOE until current studies of the power plant's impact on air quality are completed. The results of these studies will be used by SWAPCA and WDOE to grant an exception under the exception

provisions and to determine appropriate emission limitations for the power plant. However, EPA feels that it is appropriate to take final action on the technical amendment at this time since this emission limitation applies to nearly all sulfur dioxide sources in the state of Washington and not just to one power plant. EPA recognizes that studies are underway which will enable SWAPCA and WDOE to establish appropriate emission limitations for the power plant. Since EPA is not disapproving the current exception provisions, the mechanism for establishing such appropriate limitations remains in place.

The owners felt that the proposed rulemaking was subject to section 3 of Executive Order 12291 and, therefore, should have been required to be reviewed by the Office of Management and Budget (OMB). EPA agrees that the proposed rulemaking should have been reviewed by the OMB since EPA was rescinding its previous approval of the exception provisions in the Washington SIP. However, since EPA is no longer rescinding its previous approval of the exception provisions in the currently-approved Washington SIP, this issue is moot. This final rulemaking is not subject to the requirements of section 3 of Executive Order 12291.

The owners also felt that this rulemaking was incorrectly exempted from Regulatory Impact Analysis and Review requirements of Executive Order 12291, claiming that the action is a "major rule" as defined therein. This claim is based on the highly unlikely scenario that the EPA action would result in the shutdown of the power plant and adjacent coal mine. However, EPA's proposed action would have done nothing to limit the state's authority to grant an exception under its existing regulations, or EPA's authority and obligation to approve such an exception as a revision to the Washington SIP if all of the requirements of the Clean Air Act were met. As such, EPA's proposed action was not a "major rule" as defined in Executive Order 12291, since it, in and of itself, had no direct effect on the ability of any source to obtain an exception to the 1000 ppm, 60-minute average emission limitation. However, since EPA is no longer disapproving the exception provision in the currently-approved Washington SIP, this issue is also moot. This rulemaking is not a "major rule" as defined in Executive Order 12291.

III. Discussion

The Clean Air Act and EPA regulations and guidelines are clear with respect to the need for enforceable emission limitations in the SIP. The Act defines an emission limitation or emission standard as "* * * a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis * * *" (section 302(k)). For an emission limitation to be approvable as a control measure under sections 110, 161, or 172, it must meet certain requirements. There must be a clear numerical limitation, and an averaging time must be specified which is consistent with that of the national ambient air quality standards the limitation is designed to protect. Furthermore, it must include explicit test methods and procedures adequate to verify compliance.

The 1979 version of WAC 173–400–040(6) did not, in and of itself, include a specified averaging time but instead, relied upon the sampling time and averaging protocol of the source test method. Since this resulted in some ambiguity regarding the applicable averaging time, WDOE amended the regulation in 1983 to explicitly require a 60-minute averaging time, consistent with the State of Washington one-hour ambient air quality standard for sulfur dioxide. Since the addition of the 60-minute averaging time to the regulation fulfills EPA's requirement for an explicit averaging time which is no longer than the averaging time of the applicable ambient air quality standards, EPA finds this amendment to be approvable as a revision to the Washington SIP.

The Act and EPA regulations for state implementation plans (40 CFR part 51) are also clear with respect to the requirements for modifying SIP emission limitations and provisions. Section 110(i) of the Act states that, with certain exceptions, "* * * no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator." One of the listed exceptions is plan revisions under section 110 of the Act.

The exception provisions in WAC 173–400–040(6) fail to meet the requirement of section 110(i) in several ways. First and foremost, they fail to recognize the need for submittal to EPA and EPA approval of any exception granted by the state, before the existing requirement of the state implementation plan could be modified. Second, they would allow the State to grant an exception which fails to comply with the requirements of the Act and as such, could not be approved as a revision to the SIP under section 110. Specifically, the current provisions would allow an exception based solely on a showing that ambient air quality standards would not be exceeded. This fails to ensure that the requirements for prevention of significant deterioration and visibility in part C of the Act would be met or that ambient standards were not being met as a result of the use of stack heights or dispersion techniques prohibited by section 123 of the Act. Furthermore, the provisions do not ensure that a source would be required to comply with any other applicable requirement, including new source performance standards under section 111, best available control technology under section 165, lowest achievable emission rates under section 173, or best available retrofit technology under section 169A of the Act.

Because the exception provisions in WAC 173–400–040(6) fail to meet Act and EPA requirements, EPA cannot approve the provisions as a revision to the Washington SIP. However, since the current SIP contains nearly identical provisions, disapproving the submittal would not, in and of itself, rectify the SIP deficiency. Rather, EPA is taking no action on the submitted revision and intends to make a SIP call pursuant to section 110(a)(2)(H) in order to provide the State an opportunity to amend the current provisions and submit a revised regulation as a revision to the Washington SIP. This approach differs from EPA's proposal in that it would leave in the SIP, until an amended rule is approved by EPA, the current exception provisions, based on the understanding that WDOE will submit to EPA each exception granted under the current provisions as a case-by-case revision to the SIP. This approach should address the concerns of the state and local agencies and affected industries that EPA's action not constrain the State's ability to grant exceptions to its rules, while at the same time, provide the State an opportunity to ensure that its rule conforms to the Act and EPA requirements.

IV. Summary of Action

EPA is today approving amendments to the State of Washington sulfur dioxide emission limitation, specifically the first uncodified sentence of WAC 173–400–040(6), as a revision to the Washington state implementation plan (SIP). EPA is taking no action on the exception provisions (paragraphs (a) and (b)) in WAC 173–400–040(6), leaving the current SIP provisions (WAC 173–400–040(6)(a) (i) and (ii) and (6)(b)) in place. Note however, that EPA intends to make a SIP call pursuant to section 110(a)(2)(H) of the Act in order to

require revision to the exception provisions in the current regulation for control of sulfur dioxide.

Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years and has subsequently extended the waiver to April 6, 1991.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal precedes the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: April 23, 1991.

Gerald A. Emison,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(37) On April 28, 1983, the State of Washington Department of Ecology submitted amendments to the State of Washington sulfur dioxide emission limitation. These amendments clarify the averaging time for the sulfur dioxide emission limitation in WAC 173–400–040(6).

(i) Incorporation By Reference.

(A) Letter dated April 28, 1983, from the Director of the Department of Ecology to EPA Region 10 amending the State of Washington State Implementation Plan.

(B) Washington Administrative Code [WAC] Chapter 173–400 [General Regulations for Air Pollution Sources], –040 [General Standard for Maximum Emissions], (6) [Sulfur Dioxide] introductory sentence adopted into state law by the State of Washington Department of Ecology on March 30, 1983 and became effective on May 11, 1983.

3. Section 52.2476 is added to read as follows:

§ 52.2476 Discretionary authority.

(a) This section applies to any variance, exception, exemption, alternative emission limitation, bubble, alternative sampling or testing method, compliance schedule revision, alternative compliance schedule, or any other substantial change to a provision of the state implementation plan, granted by the Department of Ecology, the Department of Natural Resources, the Energy Facility Site Evaluation Council, or a local air pollution control agency in accordance with any discretionary authority granted under its statutes or regulations, regardless of whether such statutes or regulations are part of the state implementation plan.

(b) Any change to a provision of the state implementation plan described in paragraph (a) of this section must be submitted by the state for approval by EPA in accordance with the requirements of 40 CFR 51.104.

(c) Any change to a provision of the state implementation plan described in paragraph (a) of this section does not modify the requirements of the federally-approved state implementation plan or a federally-promulgated implementation plan until approved by EPA as a revision to the state implementation plan in accordance with section 110 of the Clean Air Act.

4. Section 52.2479 is revised to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

The following sections of the Washington State Implementation Plan for Compliance with Requirements of the Federal Clean Air Act (as adopted on the dates indicated) have been approved and are part of the current federally-approved, state-submitted implementation plan.

(a) Washington Administrative Code.

WAC 18–04 General Regulations for Air Pollution Sources
- Section 080 Compliance Schedules (1/22/73)
- Section 130 Regulatory Actions (1/22/73)
- Section 140 Appeals (1/22/73)

WAC 18–08 Emergency Episode Plan (undated, approved 5/31/72)

WAC 18–16 Grass Seed Field Burning (undated, approved 5/31/72)

WAC 173–400 General Regulations for Air Pollution Sources
- Section 010 Purpose (4/26/79)
- Section 020 Applicability (8/20/80)
- Section 030 Definitions (8/20/80)
- Section 040 General Standards for Maximum Permissible Emissions (except (6) Sulfur Dioxide and (13), Use of Tall Stacks or Dispersion Techniques) (8/20/80)
- Section 040(6) Sulfur Dioxide (except (b)) (4/15/83)
- Section 050 Minimum Emission Standards for Combustion and Incineration Sources (8/20/80)
- Section 060 Minimum Emission Standards for General Process sources (8/20/80)
- Section 070 Minimum Standards for Certain Source Categories (8/20/80)
- Section 090 Sensitive Area Designation (8/20/80)
- Section 100 Registration (8/20/80)
- Section 110 New Source Review (12/17/80)
- Section 120 Monitoring and Special Report (8/20/80)

Section 160 Maintenance of Pay (4/26/79)
WAC 173-402 Civil Sanctions under Washington Clear Air Act (6/24/80)
WAC 173-403 Implementation of Regulations for Air Contaminant Sources
Section 030 Definitions
Subsection (2) "Adverse Impact on Visibility" (3/6/85)
Subsection (9) "Best Available Retrofit Technology (BART)" (3/6/85)
Subsection (11) "Class I Area" (3/6/85)
Subsection (24) "Integral Vista" (3/6/85)
Subsection (25) "Land Manager" (3/6/85)
Subsection (31) "Natural Conditions" (3/6/85)
Subsection (42) "Reasonably Attributable" (3/6/85)
Subsection (46) "Significant Visibility Impairment" (3/6/85)
Subsection (51) "Visibility Impairment" (3/5/85)
Subsection (52) "Visibility Impairment of a Class I Area" (3/5/85)
Section 090 Retrofit Requirements for Visibility Protection (8/26/83)
WAC 173-405 Kraft Pulping Mills
Section 012 Statement of Purpose (8/20/80)
Section 021 Definitions (8/20/80)
Section 040 Emission Standards
Subsection (1) "Recovery Furnaces" (8/20/80)
Subsection (2) "Smelt Dissolver Tank Vent" (8/20/80)
Subsection (3) "Lime Kilns" (8/20/80)
Subsection (4) "Other Sources" (8/20/80)
Subsection (5) "Emission of Particulate Matter * * *" (8/20/80)
Subsection (6) "Fugitive Emissions" (8/20/80)
Subsection (17) "Source Testing" (8/20/80)
Section 072 Monitoring Requirements
Subsection (1) "Particulate" (8/20/80)
Subsection (4) "Production" (8/20/80)
Subsection (5) "Other Data" (8/20/80)
Section 077 Abnormal Operations or Upset Conditions (8/20/80)
Section 086 New Source Review (8/20/80)
Section 101 Exemptions (8/20/80)
WAC 173-410 Sulfite Pulping Mills
Section 012 Statement of Purpose (8/20/80)
Section 021 Definitions (8/20/80)
Section 040 Emission Standards
Subsection (1) "Sulfur Dioxide" (8/20/80)
Subsection (2) "Particulate" (8/20/80)
Subsection (3) "Fugitive Emissions" (8/20/80)
Subsection (5) "Fallout" (8/20/80)
Subsection (16) "Source Testing" (8/20/80)
Section 062 Monitoring Requirements (except (4)) (8/20/80)
Section 067 Abnormal Operations or Upset Conditions (8/20/80)
Section 086 New Source Review (8/20/80)
Section 090 Operating Permit (8/20/80)
Section 091 Exemptions (8/20/80)
WAC 173-415 Primary Aluminum Plants
Section 010 Statement of Purpose (8/24/80)
Section 020 Definitions (8/14/80)
Section 030 Emission Standards
Subsection (2)(b) "Fluoride" (8/14/80)
Subsection (4) "Visible Emissions" (8/14/80)
Subsection (5) "Fallout" (8/14/80)
Subsection (7) "Fugitive Emissions" (8/14/80)
Subsection (11) "Source Testing" (8/14/80)
Section 050 New Source Review (8/14/80)
Section 060 Monitoring and Reporting
Subsection (1)(c) "Particulate Emissions" (8/14/80)
Subsection (2) "Other Data" (8/14/80)
Section 070 Abnormal Operations or Upset Conditions (8/14/80)
Section 090 Operating Permits (8/14/80)
WAC 173-420 State Jurisdiction Over Motor Vehicles (3/29/77)
WAC 173-422 Motor Vehicle Emission Inspection (12/31/81)
WAC 173-425 Open Burning (10/24/77)
WAC 173-490 Emission Standards and Controls for Sources Emitting Volatile Organic Compounds
Section 010 Purpose (8/20/80)
Section 020 Definitions (6/29/82)
Section 025 General Applicability (6/29/82)
Section 030 Registration and Reporting (8/20/80)
Section 040 Requirements (6/29/82)
Section 070 Schedule of Control Dates (8/20/80)
Section 071 Alternative Schedule of Control Dates (8/20/80)
Section 080 Exceptions (6/29/82)
Section 090 New Source Review (4/26/79)
Section 120 Compliance Schedules (4/26/79)
Section 130 Regulatory Actions (4/26/79)
Section 135 Criminal Penalties (4/26/79)
Section 140 Appeals (4/26/79)
Section 200 Petroleum Refinery Equipment Leaks (8/20/80)
Section 201 Petroleum Liquid Storage In External Floating Roof Tanks (8/20/80)
Section 202 Leaks from Gasoline Transport Tanks and Vapor Collection Systems (8/20/80)
Section 203 Perchloroethylene Dry Cleaning Systems (6/29/82)
Section 204 Graphic Arts Systems (6/29/82)
Section 205 Surface Coating of Miscellaneous Metal Parts and Products (6/29/82)
Section 207 Surface Coating of Flatwood Paneling (8/20/80)
Section 208 Aerospace Assembly and Component Coating Operations (6/29/82)
WAC 463-39 General Regulations for Air Pollution Sources
Section 010 Purpose (7/23/79)
Section 020 Applicability (7/23/79)
Section 030 Definitions (except (4), (7), (10), (24), (25), (30), (35), (36)) (7/23/79)
Section 040 General Standards for Maximum Permissible Emissions (except introductory paragraph) (7/23/79)
Section 050 Minimum Emission Standards for Combustion and Incineration Sources (7/23/79)
Section 060 Minimum Emission Standards for General Process Sources (7/23/79)
Section 080 Compliance Schedules (7/23/79)
Section 100 Registration (7/23/79)
Section 110 New Source Review (except (1), first two sentences of (3)(b), (3)(c), (3)(d), (3)(e)) (7/23/79)
Section 120 Monitoring and Special Report (7/23/79)
Section 130 Regulatory Actions (7/23/79)
Section 135 Criminal Penalties (7/23/79)
Section 150 Variance (7/23/79)
Section 170 Conflict of Interest (7/23/79)

(b) Puget Sound Air Pollution Control Authority—Regulation I.

Article 1 Policy, Short Title & Definitions (except 1.07(s), 1.07(rr) and 1.07(xx)) (12/74)
Article 1.07(s) General Definitions, "Facility" (10/11/83)
Article 1.07(rr) General Definitions, "Source" (10/11/83)
Article 1.07(xx) General Definitions, "Volatile Organic Compound" (10/11/83)
Article 3 General Provisions (12/74)
Article 6 Notices of Construction and Orders of Approval (except 6.07(b)(7) and 6.08) (12/74)
Article 6.07(b)(7) Issuance of Approval or Order (10/11/83)
Article 6.08 Special Conditions for New Air Contaminant Sources Which Will Significantly Impact A NonAttainment Area (10/11/83)
Article 9.02 Outdoor Fires (6/13/73)
Article 9.02A (6/20/74)
Article 9.03 Emission of Air Contaminant: Visual Standard (1/77)
Article 9.04 Deposition of Particulate Matter (1/77)
Article 9.05 Incinerator Burning (1/77)
Article 9.06 Refuse Burning Equipment: Time Restriction (1/77)
Article 9.07(c) Emission of Sulfur Dioxide (8/12/70)
Article 9.07(d) Emission of Sulfur Dioxide (1/77)
Article 9.07(e) Emission of Sulfur Dioxide (1/77)
Article 9.09 Emission of Particulate Matter; Weight Rate Standard (1/77)

(c) Puget Sound Air Pollution Control Authority—Regulation II.

Article 1 Purpose, Policy, Short Title and Definitions (except 1.02) (4/8/82)
Article 1, Section 1.02 Policy (12/13/84)
Article 2 Volatile Organic Compound Emission Standards Group 1 (except 2.13) (4/8/82)
Article 2, Section 2.13 Schedule of Control Dates (12/13/84)
Article 3 Volatile Organic Compound Emission Standards—Group 2 (except 3.11) (4/8/82)
Article 3, Section 3.11 Schedule of Compliance Dates (12/13/84)
Article 4 General Provisions (except 4.02) (4/8/82)
Article 4, Section 4.02 Scope, Registration, Reporting and Notice of Construction (12/13/84)

(d) Northwest Air Pollution Authority—Regulations.

Article 455.11 Particulate Matter Standard (8/9/78)

(e) Spokane County Air Pollution Control Authority—Regulation II.

Article IV, Section 4.01 Particulate Emissions—Grain Loading Restrictions (1/6/75)

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BILLING CODE 6560-50-M

40 CFR Parts 148 and 268

[FRL-3959-4]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action to grant a case-by-case extension.

SUMMARY: The EPA is granting final approval to E.I. du Pont de Nemours & Co., Inc., in Orange, Texas for a case-by-case extension for specific injected wastes which were impacted by the August 8, 1990, ban date (California listed wastes, solvents less than one (1) percent solvent constituents and First Third wastes). This action responds to the petition submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allows any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. The Agency proposed action on this request in a July 5, 1990, **Federal Register** notice at (55 FR 27659). The Agency stated in an October 2, 1990, **Federal Register** notice at (55 FR 40229), that it was taking no action at that time on the proposed Dupont-Orange case-by-case extension because Dupont had not yet demonstrated that the no migration standard of the land disposal restrictions could be met. Dupont has now met this no migration standard through a chemical transformation demonstration for its acidic waste. In addition, Dupont will complete its containment demonstration for all its waste within the next few weeks. The EPA anticipates issuing a proposed decision on Dupont's no migration demonstration once Dupont completes its containment demonstration. Therefore, the EPA is granting Dupont-Orange a case-by-case extension. By granting this approval, Dupont-Orange can inject the above identified wastes through August 7, 1991, but not later than this date without being subject to the prohibitions applicable to such wastes.

DATES: This action is effective May 20, 1991.

ADDRESSES: The docket for this action is located at the EPA Region 6 library, 1445 Ross Avenue, Dallas, Texas 75202, and is open during normal business hours, 8 a.m. through 4 p.m., Monday through Friday. The public can review all docket materials by visiting the library.

FOR FURTHER INFORMATION CONTACT: For information contact Oscar Cabra, Jr., Chief Municipal Facilities Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733 or telephone (214) 655-7110, FTS 255-7110.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposal and Response to Comments

A. Background

A more complete discussion of the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA), may be found in previous rulemakings by the Agency. See (55 FR 22520), June 1, 1990.

On July 26, 1988, EPA promulgated a final rule (53 FR 28118, effective August 8, 1988), that established an effective date of August 8, 1990 for injected spent F001-F005 solvent wastes containing less than 1 percent solvent constituents. An August 8, 1990, effective date was established for specified California list wastes that are deep well injected. See (53 FR 30908), effective August 8, 1988.

Section 3004(m) requires the Agency to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. Wastes that meet treatment standards established by EPA are no longer prohibited and may be land disposed.

Section 3004(d), (e), (f), and (g) also allows the applicant to demonstrate to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The no migration petition process has been established by the Agency for injected wastes under 40 CFR part 148 subpart C. See (53 FR 28118), July 26, 1988.

Congress recognized that adequate alternative treatment, recovery, or disposal capacity any of which is protective of human health and the environment may not be available by the applicable statutory effective dates and authorized EPA to grant a variance (based on the earliest dates that such capacity will be available) from the effective date which would otherwise apply to specific hazardous wastes (RCRA section 3004(h)(2) and (h)(3)). In addition, under section 3004(h)(3), the Agency can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year.

On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program including procedures for submitting case-by-case extensions under § 268.5. On July 26, 1988, EPA published a final rule (53 FR 28118) establishing restrictions and requirements for Class I hazardous waste injection wells, including the framework for the no migration petition process and allowing case-by-case extensions under § 148.4 following § 268.5 procedures.

B. Demonstration Requirements

1. Summary of Requirements

Case-by-case extension applications must satisfy the requirements outlined in 40 CFR 268.5. These requirements include those specified in RCRA Section 3004(h)(3). The applicant must have entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2)), but due to circumstances beyond his control, this alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5(a)(3)).

In addition, EPA has established by regulation the following requirements: The applicant must demonstrate that he has made a good faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste (40 CFR 268.5(a)(1)). Again, the applicant must demonstrate why this nationwide capacity cannot reasonably be made available by the effective date.

Additional requirements for case-by-case demonstrations are summarized in the July 5, 1990, proposal to today's rulemaking. See 55 FRL-3805-7.

2. Commitment to Provide Protective Disposal Capacity

EPA believes that the applicant for a case-by-case extension has shown the

necessary commitment to provide protective disposal capacity within the meaning of RCRA section 3004(h)(3) and 40 CFR 268.5(a)(1). These provisions require an applicant to make two showings: (1) That the proposed "disposal capacity" is "protective of human health and the environment", and (2) that the applicant has made "a binding contractual commitment to construct or otherwise provide" such capacity. The Agency construes the first phrase to mean a no migration unit. No migration findings in 40 CFR parts 148 or 268 provide for a variance to the land disposal prohibitions and, accordingly, are functionally equivalent to compliance with treatment standards under part 268. Moreover, the statute defines protective disposal capacity for purposes of RCRA sections 3004(d), (e), and (g) as no migration units. EPA also considers no migration capacity as protective disposal capacity for purposes of RCRA section 3004(h)(2).

With respect to showing a "binding contractual commitment", where applicants have already constructed (and, indeed, are operating) the disposal units at issue, EPA interprets the regulatory language to require objective indicia of applicant's commitment to provide this capacity. EPA's approach is in line with similar practical interpretations of regulatory language. For example, the Agency has construed the term "commenced construction" to include facilities which have completed construction but did not commence operations. See 46 FR 2344, 2346 (January 9, 1981).

EPA believes that where the Agency has concluded that a no migration petition is sufficient to propose a no migration finding, this proposed finding is legitimate indicia that the applicant is, in good faith, committed to providing protective disposal capacity for purposes of 40 CFR 268.5. See 55 FR 22520. If EPA were to require an actual no migration finding as a condition for a case-by-case extension, such a reading would effectively read the phrase "protective disposal capacity" out of RCRA section 3004(h)(3) in violation of all standard tenets of statutory construction, which require that all terms be given effect when possible. The term would be read out of the statute because once the no migration petition was granted, there is no need to seek a case-by-case extensions as wastes could be disposed directly in the unit. In addition, case-by-case extension necessarily involve predictions about future capacity. For example, such predictive findings specifically include the need for permits that may not yet be issued. See 40 CFR 268.5(a)(5).

Today's case-by-case extension is based on objective indicia of the applicant's commitment to provide disposal capacity. First, the petitioner's application is based on already constructed wells. Thus, this petitioner's commitment is more definitive from petitions based solely on contracts to construct such capacity. See RCRA section 3004(h)(3). Second, the injection wells have all been permitted under both RCRA and SDWA standards, thus further demonstrating a commitment to provide this capacity. The applicant has demonstrated that only a no migration finding prevents the units from being available as protective disposal capacity. Third, today's applicant has made substantial contractual commitments in preparing the no migration petitions. Finally, EPA has a good basis for believing that this capacity will, in fact, be provided in a short period of time. Permitted hazardous waste injection wells, as a class of units, have a good record for obtaining no migration findings. EPA has already issued several no migration findings.

3. Requirement to Seek Other Alternative Capacity

The applicant's commitment to provide protective disposal capacity is not the sole basis for EPA granting a case-by-case extension. Under 40 CFR 268.5(a)(1), applicants must also make a good faith effort to seek other protective treatment, recovery, or disposal where feasible during the period that his proposed alternative capacity is not available. Such good faith efforts under § 268.5(a)(1) can be evaluated considering both the expected time period that the alternative capacity will take to become available and technical difficulties that the operator will face in bringing his waste to alternative capacity in consideration of factors in § 268.5(a)(3).

There is limited other capacity under (a)(1) to eventually handle the waste from the well operator in this proposal. However, due to logistic problems of retooling, repiping, and transportation of the large volume of waste at issue, this other capacity is not reasonably available during the short period of time EPA anticipates is necessary to process final no migration approvals or denials for these wells.

4. Reasons Alternative Capacity Cannot Reasonably be Made Available by the Applicable Effective Date

Today's applicant has, in good faith, pursued the no migration process. The operator submitted its no migration petition in a timely manner, and has responded appropriately to Agency requests for additional information in order to make a determination on the petition.

The timing of the actual finding is beyond the applicant's control. This no migration finding is a precondition to the provision of the alternative disposal capacity. EPA has reviewed 65 no migration petitions in an intensive, time-consuming process. The order that decisions are made are primarily a function of Agency resources and priorities.

The well operator in today's rulemaking has documented several logistic problems that make short-term capacity not reasonably available. The facility in question involves production operations directly connected by piping, or otherwise rely on immediate disposal in on-site injection wells. In order to make the necessary adjustments, the facility would need to temporarily shut down, perform necessary retooling and repiping, and construct a transportation system to move the large volumes of waste at issue. The receiving facility would also need to make substantial adjustments to receive these large waste volumes. These factors indicate that the other capacity is not reasonably available for short-term waste management. EPA has relied on similar criteria in providing nationwide variances under RCRA section 3004(h)(2). See 55 FR 22520.

5. Response to Comments

Dupont was the only one to comment on the EPA's proposed decision for a 3 month extension. Dupont's initial request was for a one year extension. Dupont commented during the comment period that the full year extension was necessary because the petitioning process has frequently required more than 3 months to complete. The EPA agrees in this case that the petition process has exceeded the proposed 3 month extension. Therefore, the EPA is granting an extension from May 20, 1991, through August 7, 1991, which is one year past the ban date of August 8, 1990. Dupont's additional concerns were addressed in the October 2, 1990, Federal Register. See 55 FR 40231.

II. Petition

A. Facility Summary

E.I. du Pont de Nemours & Co., Inc., Orange, Texas has petitioned EPA to grant them a twelve month extension of the effective date of the hazardous waste injection restrictions applicable to

the following wastes: California listed wastes, solvents less than one (1) percent solvent constituents, and First Third wastes.

EPA is granting Dupont-Orange an extension of the effective date of the applicable restrictions from May 20, 1991, through August 7, 1991, for the hazardous wastes which were impacted by the August 8, 1990, ban date. Dupont's request and supporting documentation are available in the public docket for this rulemaking.

B. Description of Petitioning Facility

E. I. du Pont de Nemours & Co., Inc. is a chemical manufacturing company which operates six hazardous waste injection wells in Orange, Texas.

C. Case-by-Case Extension Petition Demonstrations

Dupont's application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) Dupont has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective date of the applicable restrictions.

40 CFR 268.5(a)(2) Dupont has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Dupont has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Dupont has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Dupont has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Dupont has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) No surface impoundments or landfills will be used by Dupont to manage the waste during the extension period.

III. Agency Action

For the reasons discussed above, the Agency believes that Dupont's demonstration has satisfied all the requirements for a case-by-case extension of the August 8, 1990, effective date of the hazardous waste injection restrictions.

Therefore, EPA is granting an extension of the August 8, 1990, effective date of the restrictions on these wastes for Dupont-Orange. These wastes can be injected starting from May 20, 1991, through August 7, 1991, or until a final decision of the applicant's no migration petition is made, but not later than August 7, 1991, (unless an additional extension is granted). (sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Myron O. Knudson,

Director, Water Management Division (6W), EPA Region 6.

[FR Doc. 91-12564 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contractor Employee Communications with Government Officials

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has added a new subpart 203.71 and a clause at 252.203-7004 in the Defense FAR Supplement to implement section 837 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). This statute requires the Department to prescribe regulations to prohibit a defense contractor from discriminating against any employee with respect to the employee's terms of employment because the employee has disclosed information to a Government official concerning a defense contract, when the employee believes there has been a violation of any Federal law or regulation relating to DoD procurement. The rule also provides procedures for receiving, investigating, and adjudicating complaints from employees who believe they have been discriminated against. A clause, Prohibition Against Retaliatory Personnel Actions, is added at 252.203-7004. The new subpart and clause apply to all contracts exceeding $500,000 except contracts for commercial items sold in substantial quantities to the general public where the price is based solely on established catalog or market prices.

DATES: Effective date: May 10, 1991. Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before June 28, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90-319 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Valorie Lee, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301-3000.

FOR FURTHER INFORMATION CONTACT: Ms. Valorie Lee, Procurement Analyst, DAR Council, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule.

B. Background

Section 837 of the FY 1991 DoD Authorization Act (Pub. L. 101-510) requires the Secretary of Defense to prescribe regulations to prohibit defense contractors from discharging or otherwise discriminating against an employee with respect to the employee's compensation or terms of employment because an employee discloses information to a Government official concerning a contract between the defense contractor and the Department, when the employee believes there has been a violation of any Federal law or regulation relating to DoD procurement. This interim rule was issued under Departmental Letter 91-010, May 10, 1991, effective that date.

C. Regulatory Flexibility Act

The interim changes are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 et seq.

D. Paperwork Reduction Act

The interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3051, et seq.

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Nancy L. Ladd,

Director, Defense Acquisition, Regulations Council.

Therefore, it is proposed that 48 CFR parts 203 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 203 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. A new subpart 203.71 is added to read as follows:

Subpart 203.71—Contractor Employee Communications with Government Officials

Sec.

Subpart 203.71—Contractor Employee Communications with Government Officials

203.7100 Scope.

This subpart implements 10 U.S.C. 2409a, which expires November 5, 1994.

203.7101 Applicability.

This subpart applies to all contracts exceeding $500,000 except contracts for commercial items sold in substantial quantities to the general public where the price is based solely on established catalog or market price (see FAR 15.804–3(c)).

203.7102 Policy.

Defense contractors may not discriminate against or discharge an employee for disclosing information to an appropriate Government official, which information the employee reasonably believes evidences violations of Federal procurement laws and regulations.

203.7103 Prohibited conduct.

10 U.S.C. 2409a states that defense contractors shall not discharge or otherwise discriminate against any employee with respect to the employee's compensation or terms and conditions of employment because the employee (or any person acting pursuant to a request of the employee) discloses to an appropriate Government official information concerning a defense contract which the employee reasonably believes evidences a violation of any Federal law or regulation relating to defense procurement or the subject matter of the contract.

203.7104 Procedures for investigation of complaints.

(a) Any employee of a defense contractor who believes that he or she has been discharged or otherwise discriminated against by the contractor in violation of 10 U.S.C. 2409a for disclosing information to a Government official may file a complaint alleging the discharge or discrimination with the Director, Defense Logistics Agency. Complaints should be addressed to the Director, DLA, ATTN: DLA–G, Cameron Station, Alexandria, Virginia 22304–6100. Complaints must be filed not more than 180 days after the date on which the violation is alleged to have occurred or the date on which the violation was discovered, whichever is later.

(b) A complaint under this section shall contain a certification, signed by the complainant, with the following information:

(1) The specific nature of the alleged discriminatory act;

(2) The nature of the disclosure giving rise to the act; and

(3) Whichever of the following statements is appropriate—

(i) All attempts at resolution through an internal company grievance procedure have been exhausted;

(ii) The company grievance procedure was not used because the complainant reasonably believed it to be ineffectual, or would expose the complainant to employer reprisals; or

(iii) The company has no grievance procedure.

(c) Upon receipt of a complaint filed under paragraph (a) of this section, the Director, DLA shall—

(1) Notify both the Defense contractor named in the complaint and the head of the contracting activity (HCA) which entered into the contract of the complaint; and

(2) Conduct an initial investigation to determine whether the complaint is frivolous or merits further investigation. As part of the initial investigation, the Director shall determine whether the complainant and the defense contractor have attempted to resolve the complaint.

(d) If the Director determines that the complaint does not merit further investigation, the Director shall notify the complainant, the defense contractor, and the HCA.

(e)(1) If the Director determines that the complaint merits further investigation, the Director shall, except as provided in paragraph (e)(2) of this section, complete an investigation within 90 days after receipt of the complaint.

(2) If the Director determines that it is not possible to complete an investigation within the 90-day period prescribed in paragraph (e)(1), the Director shall notify the complainant of the reason(s) and of the date the investigation is expected to be completed. The Director may defer action on a complaint at any time with the consent of the complainant and the defense contractor.

(3) Not later than 30 days after an investigation is completed, the Director shall provide a written report of the results of the investigation to—

(i) The complainant,

(ii) Any person acting on behalf of the complainant, and

(iii) The defense contractor alleged to have committed the violation.

203.7105 Procedures for adjudicating complaints.

(a) Not later than 90 days after providing a report of the results of an investigation of a complaint, the Director shall either—

(1) Issue an order providing the appropriate relief prescribed in paragraph (d) of this section;

(2) Issue an order denying the complaint; or

(3) Terminate proceedings on the basis of a settlement agreement entered into by the Director and the Defense contractor alleged to have committed the violation.

(b) The Director may enter into a settlement agreement terminating proceedings on a complaint only with the participation and consent of the complainant.

(c) An order of the Director under this section shall be made on the record after notice and opportunity for a hearing. In issuing an order, the Director shall follow procedures that are as informal as practicable, consistent with principles of fundamental fairness. At a minimum, the Director shall afford the complainant and the contractor an opportunity to submit in writing information and argument in opposition to the concluson of the report of the results of the investigation.

(d) If, in response to a complaint, the Director determines that a violation has occurred, the Director may issue, separately or in combination, any of the following—

(1) An order that the Defense contractor that committed the violation take affirmative action to abate the violation.

(2) An order that the contractor reinstate the complainant to the position held when discharged, together with the compensation (including back pay), employment benefits, and other terms and conditions of the complainant's employment.

(3) At the request of the complainant, an assessment against the contractor, as determined by the Director, of a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant for, or in connection with, bringing the complaint on which the order was issued.

(e) In determining whether a violation has occurred, the Director shall use the standard of proof that is used by the Merit Systems Protection Board in proceedings under 5 U.S.C. 1221, as described in 5 U.S.C. 1221(e) (1) and (2).

203.7106 Procedures for review and enforcement of orders.

(a) Any person adversely affected or aggrieved by an order may obtain review of the order's conformance with 10 U.S.C. 2409a in the United States court of appeals for the circuit in which the violation alleged in the order occurred. A petition seeking such review shall be filed not more than 60 days after the issuance of the Director's order. Review shall conform to chapter 7 of title 5.

(b) Under 10 U.S.C. 2409a, an order of the Director with respect to which review could have been obtained under paragraph (a) shall not be subject to judicial review in any criminal or other civil proceeding.

(c) Whenever a person has failed to comply with an order issued under this subpart, the Director shall file an action for enforcement of the order in the United States district court for the district in which the violation was found to have occurred. In any such action, the court may grant appropriate relief, including injunctive relief, and compensatory and exemplary damages.

203.7107 Contract clause.

Use the clause at 252.203–7004, Prohibition Against Retaliatory Personnel Actions, in all solicitations and contracts exceeding $500,000 except contracts for commercial items sold in substantial quantities to the general public where the price is based solely on established catalog or market prices (see FAR 15.804–3(c)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.203–7004 is added to read as follows:

252.203–7004 Prohibition against retaliatory personnel actions.

As prescribed in 203.7107, use the following clause:

Prohibition Against Retaliatory Personnel Actions (Apr. 1991)

(a) *Definitions.*

As used in this clause,

Appropriate Government official means—

(1) An officer or employee of the Department of Defense responsible for command, direct staff assistance to a commander, contract administration, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract;

(2) A Member of Congress or an officer or employee of Congress, the General Accounting Office, the Congressional Budget Office, or the Office of Technology Assessment; and

(3) Any other officer or employee of the United States whose duties include the investigation or enforcement of any law, rule, or regulation relating to Government procurement or the subject matter of the contract.

Information concerning a contract means information about cost, price, compliance with specifications, meeting the user's requirements, user safety, use or disposition of services, real property or personal property acquired under the contract, the procurement process (including competition, negotiation, award, and administration), and relationships with Government personnel, competitors, or subcontractors.

(b) *Prohibition.* In accordance with 10 U.S.C. 2409a, the Contractor shall not discharge or otherwise discriminate against any employee with respect to the employee's compensation or terms and conditions of employment because the employee (or any person acting pursuant to a request of the employee) discloses to a Government official information concerning a defense contract, which information the employee reasonably believes evidences a violation of any Federal law or regulation relating to defense procurement or the subject matter of this contract.

(c) The Government will notify the Contractor upon receipt of any complaint filed under the provisions of this clause and subpart 203.71 of the Defense FAR Supplement. The Contractor agrees to cooperate with the Government during its investigation of any such complaint.

(d) The Contractor shall inform all employees of—

(1) The prohibitions of this clause;

(2) Employees' rights under 10 U.S.C. 2409a; and

(3) Availability of procedures implementing the statute.

(End of clause)

[FR Doc. 91–12609 Filed 5–28–91; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1910 and 1955

Providing Assistance to Beginning Farmers or Ranchers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to define "beginning farmer or rancher." This action is necessary due to provisions in the Food, Agriculture, Conservation, and Trade Act (Pub. L. 101–624), dated November 28, 1990 (hereinafter referred to as "the 1990 Farm Bill"), that require the Agency to define this term and give priority to qualified beginning farmers and ranchers to purchase suitable FmHA inventory farmland. The intended effect is to assure that a priority is given in providing assistance in the purchase of suitable FmHA inventory farmland property to applicants who are eligible beginning farmers or ranchers.

DATES: Written comments must be submitted on or before June 28, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 20 minutes to 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of collection of this information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0134), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4019.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the FmHA farm ownership loan program as listed in the Catalog of Federal Domestic Assistance: 10.407—Farm Ownership Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

The purpose of this proposed rule is to initiate the process of implementing provisions of the 1990 Farm Bill. Several sections of the Bill refer to the term "beginning farmer or rancher." Section 1813(e) states that qualified beginning farmers or ranchers will have priority over operators of not larger than family farms to purchase suitable inventory farmland. Section 1814 requires the Agency to define "beginning farmer or rancher." Senate Report No. 101–357, 101st Congress, 2nd Session (1990), indicates Congressional intent as to what the definition of "beginning farmer or rancher" should include, and that the definition should be published as proposed rule for public comment.

The Senate definition reads as follows: A farmer or rancher who "has operated a farm or ranch for not more than ten years; will materially and substantially participate in the operation of the farm or ranch; provides a majority of the day-to-day labor and management of the farm or ranch individually or along with the immediate family; agrees to participate in the loan assessment and borrower training programs established under this title; does not own land or who, directly or through interest in family farm corporations, owns land the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms in the county in which the individual is located; and demonstrates that the available resources of the family of the individual are not sufficient to enable the individual to enter or continue farming or ranching on a viable scale. The Committee intends that this provision allow the Secretary to develop criteria under which a farmer or rancher who previously farmed or ranched his or her own property may be considered a beginning farmer." FmHA has included this language in its proposed definition and has clarified that a farmer or rancher who previously farmed or ranched his or her own property may be considered a beginning farmer or rancher if they previously operated a farm or ranch not more than 10 years and will meet all other criteria addressed in the definition. FmHA has

also stated that if an applicant is an entity, all members of the entity must meet the definition.

FmHA has included the language from the Senate Report as a starting point for a definition. The Agency believes the proposed definition is relatively flexible, and will review and consider all public comments received as a result of the proposed rule before implementing the final definition.

In developing a proposed definition of a beginning farmer, FmHA prepared a Regulatory Impact Analysis to consider other alternatives to the language included in the Senate Report. It was determined if the group is defined too narrowly, there may be no applicants assigned a higher priority. If the group is defined too broadly, the priority group could include most applicants and would be equally ineffective. The broader the criteria defining the preference group, of course, the lesser chance applicants not in the preference group will have to purchase the inventory property.

The impact on the pool of applicants assigned a priority, given alternative definitions of beginning farmers, is considered here. Information is not available which would allow the Agency to determine with precision the effect of alternative definitions. However, census data and Agency surveys provide some guidance on the impact of using alternative numbers of years in farming as one of the determinants of beginning farmers.

The Agency considered that the definition limit eligibility to those operators with less than 2 years of experience. Based on both the census data and the Agency surveys, it would appear that the combination of criteria limiting eligibility to applicants with minimal owned acreage and less than 2 years on the farm would provide a preference to about 10 percent of current applicants. The Agency estimates that the proposed definition of up to 10 years on the farm would expand the preference group to up to one-third of current applicants.

The Ageny also considered including age limitations in the definition. However, this criteria would be quite restrictive. Census data shows only 1 percent of the survey farms were managed by operators younger than 25 years old, and 13 percent of farms were managed by operators younger than 35 years old. In addition, an age restriction would cause concern that the definition is discriminatory against farm operators over a certain age.

The Agency has proposed the broader criteria to assure the preference will be effective on the level with very limited numbers of applicants. In addition, the 10-year limit will assure the more farmers/ranchers in the beginning farmer category will have experience, equity, and a better chance to succeed in farming.

Section 1822 of the 1990 Farm Bill is a "Sense of Congress" that states, in part, the Agency should maintain statistics on the number of insured and guaranteed loans made, and inventory farmland sold or leased, to qualified beginning farmers or ranchers. The Agency plans to maintain these statistics. While section 1813 provides for qualified beginning farmers or ranchers to have priority to purchase suitable farmland, there are no provisions in the 1990 Farm Bill that give priority to qualified beginning farmers or ranchers when requesting financial assistance. The FmHA County Committee will determine if an applicant meets the definition of "beginning farmer or rancher." Section 1813(b) requires the County Committee to randomly select the purchaser of suitable inventory property when there is more than one equally qualified eligible applicant.

Other changes of a clarifying or editorial nature which are unrelated to the 1990 Farm Bill are also included in this proposed rule.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs-Agriculture, Loan programs-Housing and Community Development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of governement acquired property, Surplus government property.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.4 [Amended]

2. Section 1910.4 (b)(20) is amended by changing the title of Form FmHA 1945-29 from "ASCS Verification of Farm Acreage, Production and Benefits" to "ASCA Verificiation of Farm Acreages, Production and Benefits."

3. Section 1910.4 is amended by revising the fourth sentence in paragraph (g) and by adding two new sentences after the fourth sentence to read as follows:

§ 1910.4 Processing applications.

* * * * *

(g) *Determining eligibility.* * * * The County Committee will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginnign farmer or rancher, as defined in § 1955.103 of subpart C of part 1955 of this chapter, by use of Form FmHA 440-2, "County Committee Certification or Recommendation." An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority as outlined in § 1955.107 (f) of subpart C of part 1955 of this chapter. In addition, it is the responsibility of the County Committee to determine whether or not the applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is enered into, even though the applicant is not in need of FmHA credit assistance on eligible rates and terms to purchase suitable farmland. * * *

* * * * *

4. Section 1910.6 is amended by revising the first sentence in paragraph (b)(2), by redesignating paragraphs (e), (f), (g), (h), and (i) as paragraphs (f), (g), (h), (i), and (j), and by adding new paragraph (e) to read as follows:

§ 1910.6 Notification of applicant.

* * * * *

(b) * * *

(2) If the County Committee determines that the applicant is not eligible, the specific reason(s) for the rejection and the factual basis will be listed on Form FmHA 440-2. * * *

(e) *Notification of applicants requesting to purchase suitable farmland.* Applicants requesting to purchase suitable farmland in FmHA inventory will be prioritized by the County Committee in accordance with § 1955.107 (f) of subpart C of part 1955 of this chapter. Prior to the selection of the purchaser, all applicants will be notified of the category in which the County Committee placed them. Those applicants that are not in the highest priority category, *i.e.*, eligible beginning farmer and rancher catgory, will also be informed of their appeal rights in accordance with subpart B of part 1900 of this chapter. All notifications will

include the ECOA statement described in § 1910.6 (b)(1) of this chapter.

* * * * *

§ 1910.7 [Amended]

5. Section 1910.7(a) is amended in the first sentence by changing "Form FmHA 431–3" to read "Form FmHA 1944–3."

* * * * *

PART 1955—PROPERTY MANAGEMENT

6. The authority citation for part 1955 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Disposal of Inventory Property

7. Section 1955.103 is amended by placing the definition of "auction sale" after the definition of "approval official" and by adding, in alphabetical order before the definition of "capitalization value," the definition of "beginning farmer or rancher" to read as follows:

§ 1955.103 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an applicant who:

(1) Is an eligible applicant for FO loan assistance in accordance with § 1943.12 of subpart A of part 1943 of this chapter.

(2) Has operated a farm or ranch for not more than 10 years.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(4) Provides a majority of the day-to-day labor and management of the farm or ranch individually or along with the immediate family.

(5) Agrees to participate in the loan assessment and borrower training programs developed by FmHA.

(6) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property which does not exceed 15 percent of the median farm or ranch acreage in the county where the applicant will purchase land (median county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census).

(7) Demonstrates that the available resources of the family of the individual are not sufficient to enable the individual to enter or continue farming or ranching on a viable scale.

(8) If an entity, demonstrates that all members of the entity meet the above requirements.

(9) If a farmer or rancher who previously farmed or ranched their own property, has previously operated a farm or ranch for not more than 10 years and also meets all the other criteria listed above.

* * * * *

8. Section 1955.107 is amended by revising and redesignating paragraph (e)(1) as paragraph (e), and paragraph (e)(2) as paragraph (f) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(e) *Selection of purchaser for nonfarm property.* When more than one acceptable offer is received during business hours on the same day, the order in which they will be considered is by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Backup" offers will be retained in case the first offer processed cannot be closed.

(f) *Selection of purchaser for farm property.* After leaseback/buyback and homestead protection rights have expired or been waived, suitable farmland may only be sold to beginning farmers or ranchers and operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family size farms, as determined by the County Committee. In determining if the property is a family size farm, the County Committee should refer to the definitions of family farm and farm in § 1943.4 of subpart A of part 1943 of this chapter. When farm inventory property is larger than family size, the property will be subdivided into suitable family size farms pursuant to § 1955.140 of this subpart.

(1) *Priority.* In selling suitable farmland, priority will be given to applicants in the following order, as determined by the County Committee:

(i) Beginning farmers or ranchers, as defined in § 1955.103 of this subpart, who meet the eligibility requirements outlined in § 1943.12 of subpart A of part 1943 of this chapter as of the time immediately after the contract for sale or lease is entered into.

(ii) Operators of not larger than family-size farms, who meet the eligibility requirements outlined in § 1943.12 of subpart A of part 1943 of this chapter.

(iii) Operators of not larger than family-size farms, as of the time immediately after the contract of sale or lease is entered into (such operators are not in need of FmHA credit assistance on eligible rates and terms).

(2) *Random selection.* Any appeals involving an applicant's eligibility and/or the priority category that the County Committee determined that the applicant should be placed in, as set forth in § 1910.6(e) of subpart A of part 1910 of this chapter, will be concluded prior to the County Committee selecting the purchaser. When there is more than one applicant in the same priority category, the County Committee will select the purchaser from the highest priority category by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as backup offers pending sale to the successful offeror.

(3) *Notification of applicants not selected to purchase suitable farmland due to priority selection.* When the County Committee selects an eligible applicant who has priority to purchase suitable farmland, in accordance with this paragraph, all applicants not selected will be notified in writing that they were not selected. The County Committee's random selection by lot is not appealable.

Dated: May 6, 1991.

Roland R. Vautour,

Under Secretary For Small Community and Rural Development.

[FR Doc. 91–12646 Filed 5–28–91; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Part 1955

Holding Period for Suitable Inventory Farm Property in Accordance With Provisions of the Food, Agriculture, Conservation, and Trade Act of 1990

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), hereinafter referred to as the "1990 Farm Bill," amends provisions of the Consolidated Farm and Rural Development Act (CONACT) and therefore revises the procedure by which Farmers Home Administration (FmHA) manages and disposes of suitable farm inventory property. The FmHA proposes to amend its regulations to conform to paragraph (a), "Holding Period," of section 1813, "Disposition of Suitable Property," of the 1990 Farm Bill, that will allow the Agency to declare suitable farm inventory property surplus 12 months from the date first published for sale to family-size farm operators. The intended effect is to facilitate the Agency's efforts to sell farm and ranch property, reduce the Agency's holding cost for inventory

property and implement the provisions of the 1990 Farm Bill.

DATES: Written comments must be received on or before June 28, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Roger Witt, Branch Chief, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5446, South Building, Washington, DC 20250, telephone (202) 382–1984.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor becuase it will not result in an annual effect on the economy of 100 million dollars or more.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.
10.406—Farm Operating Loans.
10.407—Farm Ownership Loans.
10.410—Low Income Housing Loans. (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR 3015, subpart VC (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of the nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Pub. L. 91–190), an Environmental Impact Statement is not required.

Background

Section 1813, "Disposition of Suitable Property," of the 1990 Farm Bill amends the CONACT and therefore revises the procedures by which the Agency disposes of farm inventory property. Paragraph (a), "Holding Period," of Section 1813 provides that the Agency will classify suitable farm property surplus 12 months from the date first published for sale. The Agency's current regulations require suitable farm property to be held in inventory for a 3-year period after the date of acquisition before the property can be declared surplus and offered for sale to the general public. The Agency proposes to amend its regulations by removing the 3-year holding period and adding the provision of the 1990 Farm Bill that provides that suitable farm property will be classified surplus 12 months from the date the property was first published for sale to family-size farm operators. There are other provisions of Section 1813 of the 1990 Farm Bill that require revisions to FmHA regulations but will be addressed in separate issuances of the regulations.

The FmHA published an Interim Rule on September 14, 1988, in the Federal Register (53 FR 35638–35798) implementing certain provisions of the Agricultural Credit Act of 1987. The Interim Rule dated September 14, 1988, was effective October 14, 1988, and revised certain sections of Subparts B and C of Part 1955 of this chapter. The 1990 Farm Bill amends, in part, the Agriculture Credit Act of 1987 and related statutes and requires amendments to the Agency's existing regulations. The purpose of this document is to propose amendments to the Interim Rule in order that the Agency's regulations will be in compliance with the 1990 Farm Bill provisions.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Management of Property.

2. Section 1955.53 is amended by revising the definition of "Surplus property" to read as follows:

§ 1955.53 Definitions.

* * * * *

Surplus property. Real property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is neither farmland nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real property which is not sold within 12 months after the date the property was first advertised for sale to family-size farm operators. The 12-month period begins with the date of the first advertisement after November 28, 1990. If the real estate property was withheld from the market because it was determined its sale would have a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 12-month perid will be extended to compensate for the period of time the property was not available for sale.

3. Section 1955.63 is amended by revising paragraph (a) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as suitable or surplus. Farm property will be classified by the applicable County Committee. Property acquired under the CONACT which is originally classified as suitable may be reclassified as surplus because of physical damage such as fire, flood, sheet erosion or falling water table, which occurs, or changes in economic conditions, such as rising cost of production inputs, viable market outlets and obsolescence, which affect its suitability for program purposes. In addition, suitable farm property that is not sold to a family-size farm operator within 12 months from the date first published for sale in accordance with § 1955.107(a) of subpart C of part 1955 of this chapter will be reclassified surplus. The 12-month period begins with the

date of the first advertisement after November 28, 1990. If the property was withheld from the market because its sale may have a negative impact on farm real estate values or other administrative reasons, such as statutory or proposed regulation revisions, the 12-month period will be extended to compensate for the period of time the property was not available for sale. Form FmHA 1955–3A must be completed and entered into the FmHA field office terminal to update the change in the property's classification. If the property is offered for sale as surplus and the purchaser is eligible for FmHA assistance, it may be reclassified as suitable if it is, in fact, suitable for program purposes.

* * * * *

Subpart C—Disposal of Inventory Property

4. Section 1955.103 is amended by revising the definition of "Surplus property" to read as follows:

§ 1955.103 Definitions.

* * * * *

Surplus property. Real property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is neither farmland nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real property which is not sold within 12 months after the date the property was first advertised for sale to family-size farm operators. The 12-month period begins with the date of the first advertisement after November 28, 1990. If the real estate property was withheld from the market because it was determined its sale would have a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 12-month period will be extended to compensate for the period of time the property was not available for sale.

5. Section 1955.108 is amended by revising the introductory text and revising paragraph (c) to read as follows:

§ 1955.108 Sale of surplus property (CONACT)

Except where a lessee is exercising the option to purchase under Homestead Protection and/or Leaseback/Buyback provisions of Subpart S of Part 1955 of this chapter, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable farm property which has not been sold to a family-size farm operator within 12 months after the property was first advertised for sale will be offered for sale in accordance with this section. If during the 12-month period the property was withheld from the market because it was determined its sale would have a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 12-month period will be extended to compensate for the period of time the property was not available for sale. After the 12-month term, the property will be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the County Committee and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M of subpart G of part 1940 of this chapter. Additionally, all prospective buyers will be notified as a part of the property advertisement of the presence of highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

* * * * *

(c) *Sale by sealed bid or auction.* Surplus real property must be offered for public sale by sealed bid or auction. Suitable real property may be sold by sealed bid or auction once the property has been in inventory for 12 months after the date the property was first advertised for sale to family-size farm operators. The State Director will determine the method of sale, the minimum acceptable sale price, and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [* Refer to Exhibit B of FmHA instruction 440.1 (available in any FmHA office) for the current percentage.] For property other than farm property, equally acceptable sealed bid offers will be decided by lot. For farm property, when equally acceptable sealed bids are received from other bidders as well as an operator of not larger than a family-size farm, the County Committee will select the bidder who is the operator of not larger than a family-size farm. If there is more than one equally acceptable sealed bid offer received from not larger than family-size farm operators, the County Committee will give a priority and select the purchaser in accordance with § 1955.107 of this subpart.

* * * * *

Dated: March 22, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–12647 Filed 5–28–91; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA is proposing to issue a new part 709 to its rules and regulations. This proposal will set forth procedures applicable to revocations of charter and involuntary liquidations of Federal credit unions pursuant to 12 U.S.C. 1787(a)(1)(A), (B). It also sets forth procedures applicable to involuntary liquidations and adjudication of creditor claims against all federally insured credit unions.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G. Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Trial Attorney, Office of General Counsel, NCUA, at the above address, or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA has statutory authority to liquidate insolvent Federal credit unions pursuant to 12 U.S.C. 1787(a)(1)(A). Upon appointment by the appropriate state authorities, NCUA also acts as liquidating agent for insolvent, state-chartered federally insured credit unions. As liquidating agent of federally insured credit unions, the NCUA has

broad powers to act in place of former officals of the institution and do all things necessary to wind up the affairs of the institution. These powers help assure that credit union members receive prompt access to their funds and, if possible, continued credit union service through another institution. They also assure that NCUA is able to fulfill its obligation to minimize the cost of a liquidation to the National Credit Union Share Insurance Fund thereby protecting the Fund's assets.

Both the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) (1989) and the Crime Control Act (1990) provide explicit language concerning NCUA's duties and responsibilities as liquidating agent. FIRREA also provides a framework for adjudication of creditor claims and requires NCUA to provide for alternative dispute resolution of claims.

Congress recognized that this detailed statutory scheme would likely require implementing regulations and specifically authorized the Board to regulate in this area. *See* 12 U.S.C. 1787(b)(1), (4).

This regulation addresses the powers and duties of NCUA as liquidating agent and establishes creditor claims adjudication and alternative dispute resolution procedures. It does not apply to insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of NCUA's rules and regulations. (*See* 12 CFR part 745, subpart B.) The Board believes this regulation will provide substantive guidance to its employees acting as liquidating agents and to claimants seeking to assert a claim against a credit union in liquidation.

B. Section-by-Section Analysis

Section 709.0 sets forth the scope of part 709 and § 709.1 contains definitions used in this part.

Section 709.2 provides that the Board, by operation of law, becomes successor in interest to all rights, powers and privileges of the credit union and its members, officials and shareholders. Once the Board is appointed liquidating agent, members, officials and shareholders no longer have any right to act on behalf of the credit union. The Board, as liquidating agent, has the right to possession of all assets and property of every description of the credit union.

Section 709.3 sets forth the manner in which officials of a Federal credit union placed into liquidation by the Board may challenge that action. The Board of Directors of the credit union in liquidation may meet for the sole purpose of considering and authorizing an action in the name of the credit union to challenge the liquidation. Such an action must be brought in the United States District Court for the district where the credit union is located or the United States District Court for the District of Columbia. The action must be commenced not later than 10 days after the date on which the Board closes the credit union for liquidation. No credit union funds are available to pay the legal expenses of a challenge.

Section 709.4 sets forth the powers and duties of the liquidating agent. Subsection (a) requires the liquidating agent to promptly inventory the credit union's assets. Subsection (b) requires the liquidating agent to promptly publish a notice to creditors to present their claims by a specified date, not less than 90 days after initial publication. A similar notice must be mailed to all creditors listed on the credit union's books. The liquidating agent is required to republish the notice 1 and 2 months after the initial publication. These subsequent publications do not extend the date by which creditors must file their claims with the liquidating agent.

Subsection 709.4(c) states the liquidating agent's broad discretionary authority to collect all obligations due the credit union and do all other things, consistent with Federal law, desirable or expedient to wind up the affairs of the credit union. This inclues *inter alia* the liquidating agent's authority to dispose of assets of the credit union and repudiate contracts. The statutory basis for this broad authority is 12 U.S.C. 1787(b)(2). Although subsection (c) sets forth many of those things a liquidating agent will be required to do in connection with winding up the affairs of a credit union, it is not intended to be all-inclusive. When liquidating state chartered federally insured credit unions, in addition to the powers provided under Federal law, the liquidating agent has all the powers and privileges granted a liquidating agent pursuant to state law. *See* 12 U.S.C. 1787(j).

Subsection 709.4(d) sets forth the liquidating agent's authority to expend funds from the liquidated estate for liquidation expenses. This authority is consistent with statutory authority to perform all functions of the credit union and to preserve and conserve assets and property of the credit union. 12 U.S.C. 1787(b)(2) (A) and (B). An illustrative list of the types of assets commonly present in a liquidation is included in this section.

Section 709.5 sets forth the provisions relating to priority of payouts from the liquidation estate. Under subsection (a), secured creditors will receive their security. The value of any security will be established to the satisfaction of the liquidating agent. To the extent a claim exceeds the value of the security, it is treated as an unsecured claim of a general creditor under subsection (b), the schedule of payout priorities. This is the same schedule currently used in liquidations. Subsection (c) provides that the determination of priorities shall be based on the circumstances that exist on the date of the liquidation and subsection (d) provides that claims arising from repudiation or disaffirmance of any contract, including a lease, shall be considered claims by a general creditor for purposes of payout priority. The general policy that all claims in each category of payout priority should be paid in full before claims from a lower priority are paid is set out in subsection (e). The liquidating agent can, however, pay claims of a lower priority when he determines that adequate funds exist or will be recovered to pay all claims of a higher category in full and such action is reasonably necessary to conduct the liquidation. Any surplus after payment of allowed claims shall be paid, pro rata, to shareholders to the extent of their uninsured shares and to the National Credit Union Administration Share Insurance Fund.

Section 709.6 covers initial determinations of creditor claims. Subsection (a) requires anyone who asserts a claim to do so in writing and to comply with the requirements specified in the notice to creditors. The claim must be submitted within the time provided for in the notice to creditors. Failure to file a timely claim shall be considered a waiver of the claim and shall constitute a bar to any rights or remedies with respect to the claim. All claimants, including those involved in litigation against the credit union at the time of liquidation, must file a claim within the period provided for in the notice. The filing of a claim and the exhaustion of administrative remedies is a prerequisite necessary to establish subject matter jurisdiction in the District Court over any action brought or continued against a credit union in liquidation. *Circle Industries* v. *City Federal Sav. Bank*, 749 F.Supp. 447 (E.D.N.Y. 1990).

Under § 709.6(b), the liquidating agent has the discretion to request supplemental evidence in connection with a claim and may set reasonable limitations on the size and scope of supplemental evidence. The liquidating agent is required to compile a written record of a claim which he determines to be sufficient to provide a reasonable

basis for a decision on the claim. Subsection (c) requires the liquidating agent to render a determination on a claim within 180 days from the date the claim is filed; failure to render a determination within that time may be treated as a denial of the claim. The liquidating agent and the claimant may extend this period by written agreement.

Subsections (d) and (e) require the liquidating agent, whenever a claim is disallowed in whole or in part, to provide a written explanation of the reasons for the action to the claimant. The claimant must also be informed of his appeal rights. Notice of a determination regarding a claim is sufficient if mailed to the claimant's most recent address appearing on the credit union's books, in the claim, or in the documents filed with the claim. If the liquidating agent disallows all or part of a claim, subsection (f) requires him to file with the Board, or its designated agent, a report of his determination. This report must contain the notice to the claimant and the findings by the liquidating agent on all relevant issues.

Section 709.7 sets forth the procedures for appealing the liquidating agent's determination. The claimant must choose one of three options within 60 days of the date of mailing of the initial determination by the liquidating agent. The three options are: (1) File an administrative appeal (as discussed in subsequent sections); (2) file a lawsuit against the liquidated credit union in the United States District Court having jurisdiction over the place where the credit union's principal place of business is located or in the United States District Court for the District of Columbia; or (3) continue a lawsuit commenced before the appointment of the liquidating agent. If the claimant fails to exercise one of these options within the 60-day period, the liquidating agent's determination will be final and the claimant will have no further rights with respect to the claim.

Section 709.8 governs administrative appeals. Subsection (a) is a general section addressing administrative appeals of the initial determination by the liquidating agent. Any request for an administrative appeal must be in writing, addressed to the Board, and specify the type of appeal claimant desires. At this time there are five types of administrative appeal which may be requested. Discussed in subsequent sections, they are: (1) Hearing on the record; (2) appeal to the Board; (3) mediation; (4) nonbinding arbitration; and (5) neutral fact finding. The determination of whether to agree to a request for an administrative appeal rests solely with the Board. The 60-day period for filing or continuing a lawsuit provided for in § 709.7 is tolled from the date of a request for administrative appeal to the date of the Board's decision regarding the request.

Subsection (b) provides that a hearing on the record will be conducted in accordance with subpart A, part 747 of NCUA's rules and regulations. The burden of proof rests with the claimant. Judicial review of a final decision must be filed within 30 days.

Subsequent (c) addresses alternative dispute resolution. Paragraph (1) sets forth the procedures applicable to a claimant who requests and receives authorization to appeal the initial determination directly to the Board. This is a written appeal; there is no right of personal appearance before the Board in connection with such an appeal. The appeal must identify the facts on which the request for review is based and identify the portion of the initial determination to which the claimant objects and the reasons for the objection. Any alleged error in the initial determination should be identified. Any evidence relied upon by the claimant which was not provided to the liquidating agent must be made available to the Board.

The Board will issue a decision on the claimant's appeal within 180 days of its receipt of the appeal. Failure to do so may be treated as a denial of the appeal. The Board's decision will be in writing and will constitute final agency action on the claim. Any request for judicial review of the Board's decision must be filed within 60 days of the date of the Board's decision or be forever barred. Judicial review shall be in accordance with chapter 7, title 5 of the U.S. Code in the Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit where the credit union's principal place of business is located.

Paragraph (2) of § 709.8(c) provides the Board with the discretion to authorize mediation, nonbinding arbitration or neutral fact finding as means of alternative dispute resolution.

Section 709.9 discusses procedures for requesting expedited determination of a creditor claim in lieu of seeking a determination pursuant to the normal procedure in § 709.6. As provided in subsection (a) the claimant has the burden of demonstrating a need for expedited relief. Claimant must show: (1) Presence of a valid and enforceable or perfected security interest in the assets of the credit union; and (2) that irreparable injury will occur if the normal claims procedure is followed. Under subsection (b), any request for expedited relief, in order to be considered, must be in writing and must be received by the Secretary of the NCUA Board within 30 days of the date of the liquidating agent's mailing of the notice to the creditor. A copy of the request must be simultaneously served on the liquidating agent for the credit union. There is no right of personal appearance before the Board in connection with such a request.

Subsection 709.9(c) provides that a request for expedited relief must include the following: (1) A clear statement of the facts and issues on which the request is based; (2) a description of the nature of any security interest in the assets of the credit union; (3) a statement of the irreparable harm likely to occur if expedited relief is not granted; (4) an assessment of the likelihood of success on the merits; (5) citations to applicable legal authority supporting the request or the merits of the claim itself; and (6) a statement certifying that the liquidating agent has been mailed or hand delivered a copy of the request on or before the date it was filed with the Board. Under subsection (d) the party requesting expedited review has the burden of demonstrating entitlement to it.

Subsection 709.9(e) provides that the Board may request supplemental information to assist it in its decision regarding a request for expedited review. The Board may specify a date certain for the production of the supplemental information. A failure to provide supplemental information may, at the discretion of the Board, constitute grounds for denial of the relief requested.

As stated in § 709.9(f), the Board must render a decision within 90 days of the date the request for expedited relief was filed. If expedited review is granted, the Board's decision will allow or disallow the claim, in whole or in part. If the claim is disallowed in whole or in part, the decision will state the reasons for the disallowance and the procedure for judicial review. If expedited review is not granted, the claim is decided pursuant to the normal claims process set forth in § 709.6. A Board decision to deny expedited review is final.

Subsections (g) and (h) apply to two situations: (1) Where the Board grants expedited review and disallows all or part of the claim; and (2) the Board fails to render any decision on the request for expedited review within 90 days of the date on which the request was filed. In either case, the claimant may seek judicial determination of its rights, with respect to its security interest, by filing a

suit or continuing a suit which was filed before the appointment of the liquidating agent. Any suit must be filed or renewed within 30 days after the claimant's right to sue becomes effective under one or two above. Failure to file suit within this period shall be deemed final disallowance of the claim. Claimant shall have no further rights or remedies with respect to the claim.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). It would not impose an additional burden on credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 709

Administrative practice and procedure; Credit unions, Involuntary liquidation.

By the National Credit Union Administration Board on May 14, 1991.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to add a new part 709 to its regulations to read as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

Sec.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1787, Pub. L. 101-73, 101-647.

§ 709.0 Scope.

The rules and procedures set forth in this part apply to charter revocations of Federal credit unions pursuant to 12 U.S.C. 1787(a)(1)(A), (B) and the involuntary liquidation and adjudication of creditor claims in all cases involving federally insured credit unions. Section 709.3. applies only to Federal credit unions. Remaining sections of this Regulation are applicable to all federally insured credit unions. This part does not apply to share insurance claims arising out of the liquidiation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

§ 709.1 Definitions.

For the purposes of this part, the following definitions apply:

(a) *General Counsel* means the General Counsel of the National Credit Union Administration or any attorney assigned to the General Counsel's staff.

(b) *Liquidating Agent* means the NCUA Board or person(s) appointed by it with delegated authority to carry out the liquidation of the credit union.

(c) *Insolvent* means insolvency as that term is defined in § 700.1(j) of this chapter.

(d) *Claim* means a creditor's claim against the credit union in liquidation. This term does not include insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

§ 702.2 Appointment of liquidating agent.

(a) The Board, as liquidating agent, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the credit union, and of its members, shareholders, officers and directors, with respect to the credit union and its assets, and such members, shareholders, officers or directors, shall not thereafter have or exercise any such rights, powers, or privileges or act in connection with any assets or property of any nature of the credit union.

(b) The Board, as liquidating agent, shall take possession of and title to books, records, and assets of every description of such credit union to which such credit union has rights of possession and title to all offices and other facilities of such credit union.

§ 709.3 Challenge to revocation of charter and involuntary liquidation.

If a Federal credit union is determined to be insolvent and placed into liquidation pursuant to 12 U.S.C. 1787, the Federal credit union may, not later than 10 days after the date on which the board closes the credit union for liquidation, apply to the United States District Court for the judicial district in which the principal office of the credit union is located or the United States District Court for the District of Columbia for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Notwithstanding other provisions of this part, the board of directors of the credit union may meet following the placing of the institution into liquidation for the sole purpose of considering and authorizing the filing of this action in the name of the credit union. No such action in the name of the credit union may be instituted without the authorization of the board of directors of the institution pursuant to a valid board of directors resolution. No credit union funds shall be available to pay expenses incurred in bringing a legal action to challenge the Board's liquidation action.

§ 709.4 Powers and duties of liquidating agent.

(a) *Inventory of assets.* As soon as practicable after taking possession, the liquidating agent shall inventory the assets of such credit union as of the date of taking possession, showing the value as carried on the books of the credit union, and the security therefore, if any, a brief description of the assets and any security, and a record of the credit union's creditor and accounts liabilities.

(b) *Notice to creditors.* The liquidating agent shall promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice. This date shall be not less than 90 days after the publication of the notice. The liquidating agent shall republish such notice approximately 1 and 2 months, respectively, after the initial publication. At the time of initial publication, the liquidating agent shall mail a notice similar to the published notice to any creditor shown on the credit union's books at the last address

appearing therein. If the liquidating agent discovers the name of a creditor whose name does not appear on the credit union's books, a notice similar to the published notice shall be mailed to such creditor within 30 days after the discovery of the name and address.

(c) *General.* The liquidating agent shall collect all obligations and money due such credit union and may, to the extent consistent with its appointment, do all things desirable or expedient in its discretion to wind up the affairs of the credit union including, but not limited to, the following:

(1) Exercise all rights and powers of the credit union including, but not limited to, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, or instrument of any nature;

(2) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits, or other legal proceedings by and against the liquidating agent or the credit union or in which the liquidating agent, the credit union, or its creditors or members, or any of them, shall have an interest, and in every way to represent the credit union, its members and creditors, subject to the direction of General Counsel;

(3) Employ on a salary or fee basis such persons as in the judgment of the liquidating agent are necessary or desirable to carry out its responsibilities and functions, including, but not limited to, appraisers and Certified Public Accountants, and pay the costs out of the assets of the liquidated credit union;

(4) Employ or retain any attorney or attorneys designated by, or acceptable to, the General Counsel in connection with litigation or for legal advice and assistance, for the liquidation generally or in particular instances, and pay compensation and retainers of such attorney or attorneys, together with all expenses, including, but not limited to, the costs and expenses of any litigation, as approved by the General Counsel, out of the assets of the liquidated credit union;

(5) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, but not limited to, the effectuation, termination, or transfer of real, personal or mixed property, or that shall be necessary or proper to liquidate the credit union, and any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effective for all purposes as if the same had been executed as the act and deed of the credit union;

(6) With concurrence of General Counsel, disaffirm or repudiate any contract or lease to which the credit union is a party; the performance of which the liquidating agent, in his sole discretion, determines to be burdensome; and which in the liquidating agent's sole discretion will promote the orderly administration of the credit union's affairs.

(7) Deposit, withdraw, or transfer funds, and otherwise exerecise complete control over all investment or depository accounts maintained by or for the credit union at financial depository or similar institutions;

(8) Do such things, and have such rights, powers, privileges, immunities, and duties, whether or not otherwise granted in the rules and regulations of this part 709, as shall be authorized, directed, conferred, or imposed from time to time by the Board, or as shall be conferred by the Federal Credit Union Act;

(9) Exercise such other authority as is conferred by the Federal Credit Union Act; and

(10) Where acting as liquidating agent for a state chartered federally insured credit union, exercise all the rights, powers, and privileges granted by state law to such a liquidating agent.

(d) *Expenditure of funds of the liquidation.* The liquidating agent shall have power to:

(1) Pay all costs and expenses of the liquidation as determined by the liquidating agent;

(2) Pay off and discharge taxes and liens;

(3) Pay out and expend such sums as are deemed necessary or advisable for or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of the credit union or the liquidating agent;

(4) Pay off and discharge any assessments, liens, claims, or charges of any kind against, any asset or property of any nature on which the credit union or the liquidating agent has a lien by way of mortgage, deed of trust, pledge, or otherwise, or in which the credit union or liquidating agent has any interest;

(5) Settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against the credit union or the liquidating agent; and

(6) Indemnify its employees and agents from the assets of the credit union against liabilities incurred in the good faith performance of their duties.

(e) *Assets, claims, and contracts.* The liquidating agent shall have power to:

(1) Sell for cash or on terms, exchange, assign, or otherwise dispose of, in whole or in part, any or all of the assets and property of the credit union, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to the credit union or the liquidating agent; and

(2) Surrender, Abandon, and release any chose in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the credit union or the liquidating agent.

§ 709.5 Payout priorities in involuntary liquidation.

(a) Claimants whose claims are secured shall receive their security. To the extent their claim exceeds the value of their security, as determined to the satisfaction of the liquidating agent, they shall have an unsecured claim against the credit union having priority as provided in paragraph (b) of this section.

(b) Unsecured claims against the liquidation estate that are proved to the satisfaction of the liquidating agent shall have priority in the following order:

(1) Administrative costs and expenses of liquidation;

(2) Claims for wages and salaries, including vacation, severance, and sick leave pay;

(3) Taxes legally due and owing to the United States or any state or subdivision thereof;

(4) Debts due and owing the United States, including the National Credit Union Administration;

(5) General creditors, and secured creditors (to the extent that their claims exceed their security interest);

(6) Shareholders to the extent of unsecured shares, and the National Credit Union Share Insurance Fund, to the extent of its payment of share insurance; and

(7) In a case involving liquidation of a corporate credit union, permanent capital base instruments of corporate credit unions.

(c) Priorities are to be based on the circumstances that exist on the date of liquidation.

(d) If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, such claim shall be considered a general creditor claim under paragraph (b)(5) of this section

and not a cost or expense of liquidation under paragraph (b)(1) of this section.

(e) All unsecured claims of any category or class or priority described in paragraph (b)(1) through (b)(7) of this section shall be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment shall be made pro rata. Notwithstanding anything to the contrary herein, the liquidating agent may, at any time, and from time to time, prior to the payment in full of all claims for a category or class with higher priority, make such distributions to claimants in priority categories described in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section as the liquidating agent believes are reasonably necessary to conduct the liquidation, provided that the liquidating agent determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full of allowed claims, such surplus shall be distributed to the uninsured shareholders and the National Credit Union Share Insurance Fund pro rata. In a case involving liquidation of a corporate credit union, any remaining surplus shall be distributed to claimants in priority category in paragraphs (b)(7) of this section.

§ 709.6 Initial determination of creditor claims by the liquidating agent.

(a) Any party wishing to sumbit a claim against the liquidated credit union must submit a written proof of claim in accordance with the requirements set forth in the notice to creditors. A failure to submit a written claim within the time provided in the notice to creditors shall be deemed a waiver of said claim and claimant shall have no further rights or remedies with respect to such claim.

(b) The liquidating agent may require submission of supplemental evidence by the claimant and by interested parties in the event of a dispute concerning a claim against any asset of the liquidated credit union. In requiring the submission of supplemental evidence, the liquidating agent may set such limitations of time, scope; and size as the liquidating agent deems reasonable in the circumstances, and may refuse to include in the record submissions or portions of submissions not in compliance with such limitations or requirements. The liquidating agent shall compile such written record of a claim or dispute as, in its discretion, is deemed sufficient to provide a reasonable basis for allowing or disallowing a claim or resolving a dispute. This written record shall be considered the administrative record.

(c) The liquidating agent shall determine whether to allow or disallow a claim and shall notify the claimant within 180 days from the date a claim against a credit union is filed pursuant to paragraph (a) of this section. This 180-day period may be extended by written agreement between the claimant and the liquidating agent. Failure by the liquidating agent to determine a claim within the 180 day period, or within the extended period, shall be deemed a denial of the claim.

(d) If a claim or any portion thereof is disallowed the notice to the claimant shall contain a statement of the reasons for the disallowance and an explanation of appeal rights pursuant to § 709.7 of this part.

(e) Notice of any determination with respect to a claim shall be sufficient if mailed to the most recent address of the claimant which appears:

(1) On the credit union's books;

(2) In the claim filed by the claimant; or

(3) In the documents submitted in the proof of claim.

(f) In the event the liquidating agent disallows all or part of a claim, the liquidating agent shall file with the Board, or its designated agent, a report of its determination. This report shall become part of the record and shall include the notice to the claimant and findings on all issues raised and decided by the liquidating agent.

§ 709.7 Procedures for appeal of initial determination.

Time for filing. In order to appeal all or part of an initial decision which disallows a claim, in whole or in part, a claimant must, within sixty (60) days of the mailing of the initial determination, file an administrative appeal pursuant to § 709.8 of this part, or file suit against the liquidated credit union in the United States District Court for the District of Columbia or in the United States district court having jurisdiction over the place where the credit union's principal place of business is located, or continue an action commenced before the appointment of the liquidating agent. If the claimant does not appeal or file or continue a suit, any disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

§ 709.8 Administrative appeal of the initial determination.

(a) *General.* A claimant requesting an administrative appeal may request review pursuant to any of the procedures listed in paragraphs (b) or (c) of this section. Any appeal of the initial determination must be in writing and must specify what type of appeal the claimant requests. The determination of whether to agree to a request for administrative appeal shall rest solely with the Board, which shall notify the claimant of its decision in writing. The sixty (60) day period for filing a lawsuit in United States district court, provided for in § 709.7 of this part, shall be tolled from the date of claimant's request for an administrative appeal to the date of the Board's decision regarding that request.

(b) *Hearing on the record.* Except as provided herein, any hearing requested pursuant to this section shall be conducted in accordance with the provisions of subpart A, part 747, of this chapter. The Board shall render a final decision with respect to such claim after consideration of the hearing record and recommended decision. The Board's determination shall be subject to judicial review under Chapter 7 of Title 5, United States Code. Any claimant seeking judicial review of the Board's final decision under this paragraph must file a petition in the court of appeals for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty (30) days of the date of the Board's final decision. If a claimant does not file a petition before the end of the 30-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(1) *Burden of proof.* In any hearing on the record, the burden of proof to establish entitlement to any modification of the initial determination shall rest solely upon the claimant.

(2) *Order of procedure.* In any hearing on the record, at the time for opening arguments, counsel for the claimant shall argue first, and at the time for closing arguments, counsel for the claimant shall argue last.

(c) *Alternative dispute resolution.* Paragraphs (c) (1) and (2) of this section list alternatives for dispute resolution which may be available at the discretion of the Board. From time to time, the NCUA Board may authorize additional alternative dispute resolution processes.

(1) *Appeal to the Board.* Pursuant to this subparagraph, the claimant may file an appeal with the NCUA Board within the time provided for in § 709.7. The appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

There shall be no personal appearance before the Board in connection with an appeal under this subparagraph.

(i) *Content of appeal.* Any appeal must include:

(A) A statement of the facts on which the appeal is based;

(B) A statement of the basis for the initial determination to which the claimant objects and the alleged error in such determination, including citations to applicable statutes and regulations;

(C) Any other evidence relied upon by the claimant which was not previously provided to the liquidating agent.

(ii) *Procedures for review of the appeal—*

(A) Within 60 days of the date of the Board's receipt of an appeal, pursuant to paragraph (c)(1) of this section, the Board may request in writing that the claimant submit supplemental evidence in support of its appeal. If additional evidence is requested, the claimant shall have 45 days from the date of issuance of such request to provide such additional information. Failure by the claimant to provide such additional information may, as determined solely by the Board, result in denial of the claimant's appeal.

(B) Within 60 days from the date of the Board's receipt of an appeal, pursuant to paragraph (c)(1) of this section, the claimant may amend or supplement the appeal in writing. In the event the claimant does amend or supplement the appeal, the provisions of paragraph (c)(1)(ii)(A) of this section, with respect to requests for additional information and responses to such requests, shall apply with equal force to any such amendment or supplement to an appeal.

(ii) *Determination on appeal.* (A) Within 180 days from the date of receipt of an appeal by the Board, the Board shall issue a decision allowing or disallowing claimant's appeal.

(B) The decision by the Board on appeal shall be provided to the claimant in writing, stating the reasons for the decision, and shall constitute a final agency decision regarding the claimant's claim.

(C) Failure by the Board to issue a decision on appeal of the claimant's claim within the 180-day period provided for under paragraph (c)(1)(iii)(A) of this section shall be deemed to be a denial of such appeal for the purposes of paragraph (c)(1)(ii) of this section.

(iv) *Judicial review.* (A) For the purposes of seeking judicial review of actions taken pursuant to paragraph (c)(1) of this section, only a determination on appeal issued by the NCUA Board pursuant this section shall constitute a final determination regarding a claim.

(B) A Final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Any request for judicial review under this subparagraph must be filed within 60 days of the date of the Board's final decision. If any claimant fails to file before the end of the 60-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(2) The following additional procedures for dispute resolution may be made available at the sole discretion of the Board: mediation; nonbinding arbitration; and neutral fact finding.

§ 709.9 Expedited determination of creditor claims.

(a) *General.* The provisions of this section establish procedures under which claimants may request expedited relief in lieu of the procedures set forth in § 709.6 of this part. A claimant shall be entitled to expedited determination of a claim only upon a showing that there exists a legally valid and enforceable or perfected security interest in assets of the liquidated credit union; and that irreparable injury will occur if the routine claims procedure is followed.

(b) *Filing of request for expedited relief.* All requests for expedited relief must be filed within 30 days from the date of mailing, by the liquidating agent, of the notice to the creditor concerned. The request shall be deemed to be filed when received by the Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. A copy of the request must be simultaneously served upon the agent for the liquidating agent for the credit union concerned. There shall be no right of personal appearance before the Board in connection with any claim submitted under this paragraph.

(c) *Content of request for expedited relief.* Any Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which the request is based;

(2) A clear and concise statement describing the nature of any security interests in any assets of the credit union;

(3) A clear and concise statement of the probable, imminent and irreparable harm likely to occur if expedited relief is not granted;

(4) An assessment of the likelihood of success on the merits of the underlying claim, including statutory citations and relevant documentation supporting the merits of the claim;

(5) Any other relevant documentation that supports the request;

(6) Citations to applicable statutes, regulations, or other legal authority; and

(7) A signed statement certifying that the agent for the liquidating agent has been mailed or hand delivered a copy of the request on or before the day that the request was filed with the Board.

(d) *Burden of proof.* The burden of proving entitlement to expedited relief rests at all times with the requester.

(e) *Additional information.* The Board may order the filing of additional information and or documentation in order to make its determination. Such filing shall be on a date certain, and failure to provide the additional documentation or information may constitute the sole grounds for denial of the request.

(f) *Decision.* Before the end of the 90-day period on which a request is filed, the Board shall render its decision and provide it to the requester. The Board will determine whether to grant expedited review and allow or disallow the claim or whether such claim should be resolved pursuant to the claims process described in § 709.6 of this part.

(1) *Expedited review denied.* A decision by the Board that expedited review is not appropriate shall be final and the claim shall be decided pursuant to the claims adjudication process set forth in § 709.6 of this part.

(2) *Expedited review granted.* If expedited review is granted, the Board shall decide the claim. If the claim is disallowed, in whole or in part, the decision shall contain a statement of each reason for the disallowance and the procedure for obtaining judicial review.

(g) *Period for filing or renewing suit.* Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to its security interest after the earlier of:

(1) The end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(2) The date the Board denies the claim.

(h) *Statute of Limitations.* If an action described in paragraph (g) of this section is not filed, or the motion to renew a previously filed suit is not

made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with paragraph (g) of this section, the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim that was allowed by the Board). Such disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

[FR Doc. 91-12411 Filed 5-28-91; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-39-89]

RIN 1545-AN64

Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (including the address for comments and requests to speak at the hearing) which was published in the **Federal Register** on April 5, 1991 (56 FR 14034). The proposed rules relate to the treatment of self-charged items of income and expense for purposes of applying the limitations on passive activity losses and passive activity credits.

DATES: Written comments must be received by June 4, 1991. Requests to speak at the public hearing scheduled for Friday, September 6, 1991, and outlines of oral comments must be received by August 23, 1991.

ADDRESSES: Send comments, requests to speak, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention CC:CORP:T:R: (PS-39-89), room 5228).

FOR FURTHER INFORMATION CONTACT: Dexter A. Johnson (202) 566-4751 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contains proposed amendments to title 26 of the Code of Federal Regulations to provide additional rules under section 469 of the Internal Revenue Code of 1986, as amended (the "Code"). Section 469 was added to the code by sections 501 and 502 of the Tax Reform Act of 1986 (Pub. L. 99-514), and was amended by section 10212 of the Revenue Act of 1987 (Pub. L. 100-203), sections 1005(a); 2004(g) and 6009(c)(3) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647), and section 7109(a) of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239).

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (PS-39-89), which was the subject of FR Doc. 91-8062, is corrected as follows:

1. On page 14034, column 2, in the preamble under the heading "**ADDRESSES:**", last line of that paragraph, the language "89), room 4229)." is corrected to read "89), room 5228).".

2. On page 14036, column 3, under the authority citation, line 2, the language "1.469-7 also issued under 26 U.S.C. 469(l)(1)." is corrected to read "1.469-7 also issued under 26 U.S.C. 469(l))4)."

§ 1.469-7 [Corrected]

3. On page 14036, column 3, § 1.469-7, the section heading "§ 1.469-7 Treatment of certain lending transactions between taxpayers and passthrough entities." is corrected to read "§ 1.469-7 Treatment of self-charged items of interest income and deduction.".

4. On page 14037, column 3, § 1.469-7(d)(1)(ii), line 3, the language "entity at the end of the entity taxable" is corrected to read "entity at any time during the entity taxable".

5. On page 14038, column 3, § 1.469-7(g) under Example (3)(i), second line from bottom of that paragraph, the language "share of X's interest income from the loans" is corrected to read "share of X's interest income from the loan".

6. On page 14038, column 3, § 1.469-7(g), under Example (3)(ii), line 5, the language "and F(X'self-charged interest income), (b)E" is corrected to read "(X's self-charged interest income), (b)E".

7. On page 14039, column 1, § 1.469-7(g), under Example (4)(i), line 8, the language "borrows the $50,000 from A on September 1," is corrected to read "borrows the $50,000 from A on October 1,".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-12315 Filed 5-28-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-34-91]

RIN 1545-AP69

Conclusive Presumption of Worthlessness of Debts Held by Banks

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to a bank's determination of worthlessness of a debt. To provide greater certainty in the treatment of bank bad debts, the proposed regulations provide for a conclusive presumption of worthlessness of debt based on the application of a single set of standards for both regulatory and tax accounting purposes.

DATES: Written comments and requests for a public hearing must be received by July 29, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (FI-34-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, telephone 202-566-3516 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in § 1.166-2(d)(3). This information is required by the Internal Revenue Service in connection with

making an election. This information will be used for audit and examination purposes. The likely respondents are banks.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total reporting burden: 2375 hours.

The estimated burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Estimated number of respondents: 9500.

Estimated number of responses per respondent: 1.

Background

This document provides proposed regulations on the circumstances under which a bank (within the meaning of section 581 of the Internal Revenue Code), subject to supervision by Federal or state authorities, may elect to determine the worthlessness of debts using a method of accounting for Federal income tax purposes under which debts generally are conclusively presumed to be worthless when they are charged off for regulatory purposes. Under current law, a taxpayer that is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards, may rely on a conclusive presumption of worthlessness of debts and claim deductions for those bad debts if the taxpayer (1) is specifically ordered by its supervisory authority to charge off the debt or (2) voluntarily charges off the debt and the supervisory authority confirms in writing that it would have ordered the taxpayer to charge off the debt had there been an examination at the time of the charge-off. The conclusive presumption applies only if the taxpayer claims a deduction for the amount charged off at the time of filing its Federal income tax return for the year in which the charge-off takes place.

Taxpayers have requested that the Internal Revenue Service amend its regulations relating to the conclusive presumption of worthlessness and extend the presumption to routine debt charge-offs made in accordance with the policies established by bank supervisory authorities. Generally, routine charge-offs made by a bank are done based on a finding of worthlessness pursuant to the bank's internal loan review process, which is subject to examination by the bank's supervisory authority. Thus, taxpayers have urged that a determination of worthlessness for regulatory purposes should entitle a bank to a conclusive presumption of worthlessness for tax purposes.

Explanation of Provisions

Section 1.166–2(d) is proposed to be amended by adding new subparagraphs (3) and (4). New paragraph (d)(3) provides banks an election which, subject to certain conditions, generally allows banks to conform their tax accounting for bad debts with their regulatory accounting and thereby deduct for tax purposes those loans that are charged off for regulatory purposes. New paragraph (d)(4) clarifies that the term "bank", for purposes of § 1.166–2(d), means a bank as defined in section 581 of the Code and, therefore, includes thrift institutions. New paragraph (d)(4) also clarifies that the term "charge-off", as it pertains to banks regulated by the Office of Thrift Supervision, includes the establishment of specific allowances for loan losses.

By making the conformity election under paragraph (d)(3), a bank establishes a conclusive presumption that debts charged off for regulatory purposes are worthless for Federal tax purposes. This conclusive presumption of worthlessness, however, only applies to debt charge-offs that (1) result from specific order of the bank's supervisory authority or (2) correspond to the bank's classification of the debt, in whole or in part, as a loss asset under applicable regulatory standards. This rule is designed to limit the application of the conclusive presumption to debts that generally would be worthless under general tax principles. While this limits the scope of the conclusive presumption, the presumption would still apply to qualifying charge-offs whether or not the bank also claims other charge-offs or bad debt deductions that are outside the scope of the presumption.

For example, under reporting standards recently proposed by the Federal Financial Institutions Examination Council, financial institutions would, under certain circumstances, be permitted to return nonaccrual loans to accrual status by charging off a portion of the loan. See 56 FR 11441 (March 18, 1991). Although the conclusive presumption would not apply to many of the charge-offs made under this proposed reporting standard because most debt charge-offs made under that standard would not correspond to the classification of the debt as a loss asset, a bank that elects to use the conclusive presumption would continue to apply that presumption to the qualifying portion of charge-offs even if it also made non-qualifying charge-offs under the proposed reporting standard.

If a bank elects to use this conclusive presumption, the bank must be consistent and claim its bad debt deduction for debt charge-offs subject to the conclusive presumption in the same year that the debt is charged off for regulatory purposes. If the conclusive presumption does not apply to a debt charge-off, the bank will be allowed a deduction for that charge-off only for the taxable year in which the debt is worthless, in whole or in part, under general tax rules. See § 1.166–2. Moreover, no bad debt deduction will be allowed for any debt that has not been charged off for regulatory purposes. In addition, the bank must (1) maintain internal loan review and loss classification standards that are consistent with the requirements of its supervisory authority and (2) have the supervisory authority's approval of those standards and their application.

The conformity election is made by attaching a statement to the bank's Federal income tax return, and it applies to the year of the return and all subsequent years. The bank may revoke its election only with the permission of the Commissioner. See section 446(e) and § 1.446–1(e). The revocation of the election may also be initiated by the Commissioner, but only if the bank has not adhered to the conditions for making the election or if it has claimed deductions that exceed those warranted by the exercise of reasonable business judgment in applying the regulatory standards. If an election made by a bank under paragraph (d)(3) is revoked, another election may be made by the bank only with the consent of the Commissioner.

The election under proposed paragraph (d)(3) applies only to debts that become worthless and, therefore, does not apply to interest accruals on nonperforming loans. The issue of when a bank may cease to accrue interest on nonperforming loans for Federal income tax purposes is currently being considered by the Treasury Department.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to

these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place, and date for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Bernita L. Thigpen, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.166–2 is amended by adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 1.166–2. Evidence of worthlessness.

* * * * *

(d) * * *

(3) *Conformity election.*—(i) *In general.* In lieu of applying paragraphs (d) (1) and (2) of this section, a bank that is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards, and that meets the requirements of paragraph (d)(3)(iii) of this section may elect under this paragraph (d)(3) to establish a conclusive presumption of worthlessness for debts.

(ii) *Conclusive presumption.* If a bank makes an election under this paragraph (d)(3) and satisfies the requirements of paragraph (d)(3)(iii) of this section, debts charged off, in whole or in part, for regulatory purposes during a taxable year are conclusively presumed to have become worthless, or worthless only in part, as the case may be, during that year, but only if the charge-off results from a specific order of the bank's regulatory authority or corresponds to the bank's classification of the debt, in whole or in part, as a loss asset. As asset is classified as a loss asset by a bank if the bank assigns the asset to a class that corresponds to a loss asset classification under the standards set forth in the "Uniform Agreement on the Classification of Assets and Securities held by Banks" (See Attachment to Comptroller of the Currency Banking Circular No. 127, Rev. 4–26–91, Comptroller of the Currency, Communications Department, Washington, DC 20219), or other similar guidance, issued by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve, and the Conference of State Bank Examiners; or for institutions under the supervision of the Office of Thrift Supervision, 12 CFR 563.160(b)(3).

(iii) *Requirements.* For purposes of this paragraph (d)(3), the following requirements must be satisfied for the year of the election and any subsequent year for which this paragraph (d)(3) applies—

(A) In connection with its most recent examination involving the bank's loan review process, the bank's supervisory authority must have expressly determined that the bank maintains and applies loan review and loss classification standards that are consistent with the regulatory standards of that supervisory authority; and

(B) The bank claims a bad debt deduction only for debts that have been charged off, in whole or in part, for regulatory purposes, and, in the case of all debt charge-offs subject to the conclusive presumption, claims the deduction for such debts (or portion thereof) only for the taxable year in which the debt is conclusively presumed to be worthless under paragraph (d)(3)(ii) of this section.

(iv) *Election*—(A) *In general.* For any taxable year ending after *(Insert the date this document is published in the* **Federal Register** *as a final regulation)*, a bank makes an election under this paragraph (d)(3) for the taxable year and all subsequent years by attaching a written statement to its timely filed return (including extensions) for the first taxable year. A written statement required pursuant to this paragraph (d)(3)(iv) must include the name, address, and taxpayer identification number of the electing bank and contain a declaration that the requirements of paragraph (d)(3)(iii) of this section are currently satisfied and will continue to be satisfied until such time as the bank obtains the Commissioner's consent to revoke its election or the election is revoked by the Commissioner pursuant to paragraph (d)(3)(v) of this section.

(B) *Method of Accounting.* An election under this paragraph (d)(3) is a change in method of accounting. The consent of the Commissioner, pursuant to section 446(e), to make this change is granted to any bank that makes the election in accordance with the procedures in paragraph (d)(3)(iv)(B) of this section for the first time. The making of an election under this paragraph (d)(3) does not by itself change the basis of any debt held by the bank. Therefore, no adjustment under section 418(a) is permitted or required.

(C) *Revocation of election.* Once made, an election under this paragraph (d)(3) is revocable only with the consent of the Commissioner. See section 446(e) and § 1.446–1(e). If the bank has previously made an election under this paragraph (d)(3) and the Commissioner has either revoked or granted permission to revoke that election, another election under this paragraph (d)(3) may only be made with the consent of the Commissioner.

(D) *Transition period.* For taxable years ending before the first examination of the bank by its supervisory authority that is after *(Insert the date this document is published in the* **Federal Register** *as a final regulation)* and involves the bank's loan review process, the requirement in paragraph (d)(3)(iii)(A) of this section will be deemed to have been met provided that—

(1) the bank represents in the declaration required in paragraph (d)(3)(iv)(A) of this section that its supervisory authority did not criticize the bank's internal loan review and loss classification process in its most recent examination of the bank involving such process that occurred prior to *(Insert the date this document is published in the* **Federal Register** *as a final regulation)*, and

(2) in the first such examination after *(Insert the date this document is published in the* **Federal Register** *as a*

final regulation), the bank's supervisory authority expressly determines that the bank maintains and applies loan review and loss classification standards that are consistent with the regulatory standards of that supervisory authority.

(v) *Revocation of election by Commissioner.* An election under this paragraph (d)(3), and the resulting conclusive presumption, may be revoked by the Commissioner as of the beginning of a taxable year only if:

(A) The bank failed to satisfy either of the requirements of paragraph (d)(3)(iii) of this section for the taxable year; or

(B) The bank has taken charge-offs and deductions for the taxable year that, under all the facts and circumstances existing at the time, were substantially in excess of those warranted by the exercise of reasonable business judgment in applying the regulatory standards of the supervisory authority.

(4) *Definitions.* For purposes of this paragraph (d)—

(i) *Bank.* The term "bank" has the meaning assigned to it by section 581.

(ii) *Charge-off.* For banks regulated by the Office of Thrift Supervision, the term "charge-off" includes the establishment of specific allowances for loan losses in the amount of 100 percent of the portion of the debt classified as loss.

Michael J. Murphy,

Acting Commissioner of Internal Revenue

[FR Doc. 91-12644 Filed 5-28-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3959-9]

Open Meetings of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee meetings—Negotiated Rulemaking Committee on Clean Fuels Rules and Guidelines.

SUMMARY: The Clean Fuels Rules and Guidelines Negotiating Committee will hold two, two-day meetings to attempt to reach consensus.

DATES: The Committee will meet on June 13, 14, 26, and 27. The June 13 and 26 meetings will run from 9 a.m. to 6 p.m. The June 14 and 27 meetings will run from 8 a.m. to 4 p.m.

ADDRESSES: All meetings will be held at the Hyatt Regency, 1 Bethesda Metro Center, Bethesda, Maryland, (301) 657-1234.

FOR FURTHER INFORMATION CONTACT: Persons with questions regarding substantive aspects of the reformulated fuels rule, should call Carol Menninga at (303) 668-4575. Call Alfonse Mannato, (202) 382-2667, with questions regarding the oxygenated fuels guidelines. Persons needing further information on Administrative matters should call Phil Harter at (202) 887-1033.

Dated: May 23, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning, and Evaluation.

[FR Doc. 91-12625 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3557/P523; FRL-3883-9]

RIN-AC18

Pesticide Tolerances for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the pesticide chlorpyrifos in or on the raw agricultural commodity caneberries (*Rubus* spp., including blackberries; *Rubus caesius* (youngberry); *Rubus loganbaccus* (loganberry); *Rubus occidentalis, idaeus*, and *strigosus* (red and black raspberries); and varieties and/or hybrids of these). The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 7E3557/P523], must be received on or before June 28, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3557 to EPA on behalf of the Agricultural Experiment Stations of New York, Oregon, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite TCP (3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity caneberries at 2.0 parts per million (ppm), of which no more than 1.0 ppm is chlorpyrifos. The petition was later amended to propose the tolerance at 1.0 ppm for residues of chlorpyrifos per se in or on caneberries.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for systemic effects of 1.0 milligram (mg)/kilogram (kg)/day and lowest effect level (LEL) (increased liver weight) of 3.0 mg/kg/day. The NOELs for cholinesterase (ChE) inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells. Levels tested were 0, 0.01, 0.03, 0.1, 1.0, and 3 mg/kg/day.

2. A voluntary human study with ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse chronic toxicity/carcinogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0, 0.5, 5, and 15 ppm, equivalent to 0.075, 0.75, and 2.25 mg/kg/day).

4. A 2-year rat feeding/carcinogenicity study with ChE NOEL of 0.1 and LEL of 1.0 mg/kg/day (based on decreased plasma and brain ChE activity), and a systemic NOEL of 1.0 mg/kg/day and LEL of 10 mg/kg/day (based on decreased erythrocyte and hemoglobin values and increased platelet count during the first year). There were no observed carcinogenic effects at the levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study.

5. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

6. Two rat developmental toxicity studies: one negative for developmental toxicity at all dose levels (levels tested were 0.1, 3.0, and 15.0 mg/kg/day); and one with maternal and developmental NOELs of 2.5 mg/kg/day (levels tested, by gavage, were 0, 0.5, 2.5, and 15 mg/kg/day).

7. A mouse developmental toxicity study with a teratogenic NOEL greater than 25 mg/kg/day (highest dose tested), and a developmental fetotoxic NOEL of 10 mg/kg/day and LEL of 25 mg/kg/day (decreased fetal length and increased skeletal variants).

8. A developmental toxicity study in rabbits with maternal and developmental NOELs of 81 mg/kg/day, and maternal and developmental LELs of 140 mg/kg/day (based on maternal decreased food consumption on gestation days 15 to 19, and body weight loss during the dosing period followed by a compensatory weight gain; and based on a slight reduction in fetal weights and crown-rump lengths, and fetal increased incidence of unossified fifth sternebrae and/or xiphisternum). Levels tested were 0, 1, 9, 81, and 140 mg/kg/day.

9. An acute delayed neurotoxicity study in the hen that was negative at 50 and 100 mg/kg/day.

10. Several mutagenicity studies which were all negative. These include an Ames assay, two Chinese hamster ovary cell mutation assays, a micronucleus assay for chromosomal aberration, an in vitro chromosomal aberration assay with and without enzymatic activation, and an unscheduled DNA synthesis assay.

11. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is TCP. TCP is considered to be less toxic than chlorpyrifos and is not a ChE inhibitor. Several available toxicity studies utilizing TCP are described below:

a. A 90-day rat feeding study with a systemic NOEL of 30 mg/kg/day. Levels tested were 0, 10, 30, and 100 mg/kg/day.

b. A rat developmental toxicity study with no developmental toxicity observed at the dosages tested (0, 50, 100, and 150 mg/kg/day).

c. Mutagenicity studies (including an Ames assay and an unscheduled DNA synthesis assay) were negative for mutagenic effects.

Most existing tolerances for chlorpyrifos are established for combined residues of chlorpyrifos and its TCP metabolite. In the Registration Standard for Chlorpyrifos, dated June 1989, the Agency concluded that the TCP metabolite is not of toxicological concern and is proposing comprehensive tolerance revisions to remove TCP from the tolerance definition. Accordingly, tolerances can be lowered by reducing them to levels adequate to cover residues of chlorpyrifos per se. The Agency is currently reviewing data that will allow a comprehensive tolerance revision to remove TCP from the tolerance expression. The tolerance for caneberries is proposed for chlorpyrifos per se since the residue data indicate that a tolerance of 1.0 ppm is adequate to cover residues of chlorpyrifos resulting from the proposed use of the pesticide.

Although additional plant and animal metabolism data are needed to fully characterize the residues, the available metabolism data are adequate to support the proposed use of chlorpyrifos on the commodity, caneberries.

The reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. The anticipated residue contribution (ARC) from dietary exposure to chlorpyrifos residues is estimated to be 0.00424 mg/kg body weight/day for the overall U.S. population. The ARC is calculated using percent crop treated and anticipated residue data for only some crops. The available information pertaining to the direct treatment of beef and dairy cattle is not adequate to calculate anticipated residues for milk and beef products, which are major contributors to exposure. Registration for direct treatment of beef and dairy cattle was voluntarily cancelled by the registrant in December of 1989, with a provision allowing the use of existing stocks already labeled for this use. For these reasons, EPA believes that the 0.00424 mg/kg body weight/day likely overstates the exposure. When the Agency is satisfied that direct application to cattle is no longer practiced, exposure estimates will be revised accordingly.

The contribution to exposure from the proposed tolerance on caneberries (assuming tolerance-level residues and 100 percent of crop treated) is estimated to be 0.00002 mg/kg/day, calculated to be less than 1 percent of the total estimated exposures, a negligible increase.

An adequate analytical method, gas chromatography, is available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. No secondary residues in meat, milk, poultry, or eggs are expected since caneberries are not an animal feed commodity. There are currently no actions pending against continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3557/P523]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or

establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by redesignating existing paragraph (c) as paragraph (d) and adding new paragraph (c), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) Tolerances are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate in or on the following raw agricutural commodity:

Commodity	Parts per million
Caneberries	1.0

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the following commodities:

Commodity	Parts per million
Cherimoya	0.05
Feijoa (pineapple guava)	0.05
Sapote	0.05

[FR Doc. 91-12636 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 8F3617 and FAP 8H5554/P524; FRL-3889-7]

RIN 2070-AC18

Pesticide Tolerances for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of the fungicide metalaxyl and its metabolites in or on sugar beet (tops) at 10.0 parts per million (ppm), sugar beet (roots) at 0.5 ppm, and for the feed additive tolerance of 5.0 ppm in sugar beet molasses. This regulation to establish the maximum permissible levels for residues of metalaxyl in or on the commodities was requested in petitions submitted by Ciba-Geigy Corp.

DATES: Comments, identified by the document control number, (PP 8F3617 and FAP 8H5554/P524), must be received on or before June 28, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-1900.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given below, from 8 a.m. to 4 p.m., Monday and Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 12, 1988 (53 FR 39783), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP) 8F3617 and a feed additive petition (FAP) 8H5554 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide metalaxyl (N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester) and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester in or on sugar beet (tops) at 10.0 ppm, sugar beet (roots) at 0.5 ppm, nongrass animal feeds group at 6.0 ppm, grass forage, fodder, and hay group at 2.0 ppm, legume vegetables (dry or succulent) group at 1.0 ppm, legume vegetables (foliage) at 10.0 ppm, and legume vegetable cannery waste at 11.0 ppm, and a food additive regulation for the same pesticide in or on molasses at 4.0 ppm resulting from application of the pesticide to the growing crop. Since then, Ciba-Geigy Corp. has petitioned the Agency to withdraw all proposed tolerances except for the sugar beet (tops at 10.0 ppm and roots at 0.5 ppm) and to increase the food additive regulation level for sugar beet molasses to 5.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances and food additive regulation are being sought and capable of achieving the intended physical or technical effect. The toxicological data considered in support of the tolerance include the following:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 ppm).

2. A developmental toxicity study in rats with a NOEL of 400 mg/kg bwt (highest dose tested (HDT)). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl did not induce gene mutations in bacteria, yeast, and lymphoma cells in vitro with or without metabolic activation. The fungicide also caused no structural or numerical chromosomal aberrations in yeast, hamsters (in vivo nucleus anomaly assay), or mice (a dominant lethal assay). No DNA damage was observed

in bacteria, and no unscheduled DNA synthesis was noted in rat primary hepatocytes or human fibroblasts in vitro as the result of exposure to metalaxyl. These results suggest that metalaxyl is not genotoxic.

5. A mouse dominant-lethal study that was negative for mutagenicity.

6. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.25 mg/kg bwt/day (250) ppm. Effects found at 250 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

8. A 2-year rat chronic feeding/oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm) based upon slight increases in liver weight to body weight ratios at 1,250 ppm.

9. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects were noted at any of the treatment doses, sexes, or species.

The reference dose (RFD) based on the 6-month dog feeding (NOEL 6.25 mg/kg bwt/day), and using a hundred-fold safety factor, is calculated to be 0.060 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here are 0.010533 mg/kg bwt/day and utilize 17.55 percent of the RFD.

The nature of the residue is adequately understood, and adequate analytical methods (capillary N/P GLC) are available for enforcement purposes. Because of the long lead time from establishing these tolerances and food additive regulations to publication of the enforcement methodology in the Pesticide Analytical Manual, vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-4432.

The pesticide is considered useful for the purpose for which the tolerances and food additive regulation are sought and capable of achieving the intended physical or technical effect. Existing meat and milk tolerances are adequate to cover any secondary residues from the feed use of metalaxyl in conjunction with proposed tolerances. Based on the information and data considered, the Agency concludes that the establishment of the tolerances for sugar beet tops and roots will protect the public health, and use of the pesticide in accordance with the terms of the prepared food additive regulation will be safe. Therefore, the tolerances and food additive regulation are established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that the rulemaking proposal for a tolerance on sugar beet tops and roots be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, (PP 8F3617 and FAP 8H5554/P524). All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations, or raising tolerance levels or food additive regulations, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (40 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedures, Agriculture commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.408(a) is amended in the table therein by revising the entry for sugar beet tops and by adding and alphabetically inserting a new entry for sugar beet roots, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
* * * * *	

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 186.4000(b) is amended in the table therein by adding and alphabetically inserting the feed commodity sugar beet molasses, to read as follows:

§ 186.4000 Metalaxyl.

* * * * *

(b) * * *

Feeds	Parts per million
* * * * *	
Sugar beet molasses	5.0
* * * * *	

* * * * *

[FR Doc. 91-12397 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300233; FRL-3926-8]

RIN 2070-AC18

Vinylpyrrolidone-Vinyl Acetate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of the pesticide chemical vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9) when used as an inert ingredient (emulsion stabilizer, film-forming agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. The proposed regulation was requested by the GAF Chemicals Corporation (GAF).

DATES: Comments, identified by the document control number (OPP-300233), must be received on or before June 28, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 726, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-5180.

SUPPLEMENTARY INFORMATION: At the request of GAF Chemicals Corp., 1361 Alps Rd., Wayne, NJ 07470, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9) when used as an inert ingredient (emulsion stabilizer, film-forming agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbon; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide

formulation. Exemptions from some or all of these requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for vinylpyrrolidone-vinyl acetate copolymer will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers" the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) limit potential risks by identifying polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk.

Vinylpyrrolidone-vinyl acetate copolymer conforms to the definition of a polymer given 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum average molecular weight of vinylpyrrolidone-vinyl acetate copolymer is 6,700. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. Vinylpyrrolidone-vinyl acetate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Vinylpyrrolidone-vinyl acetate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Vinylpyrrolidone-vinyl acetate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Vinylpyrrolidone-vinyl acetate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Vinylpyrrolidone-vinyl acetate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Vinylpyrrolidone-vinyl acetate copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Vinylpyrrolidone-vinyl acetate copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. Vinylpyrrolidone-vinyl acetate copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, it has been found that when used in accordance with good agricultural practice this ingredient is useful and does not pose a risk to human health or the environment. Therefore, EPA concludes that a tolerance is not necessary to protect the public health and proposes an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, (OPP–300233). All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, new § 180.1106 is added, to read as follows:

§ 180.1106 Vinylpyrrolidone-vinyl acetate copolymer; exemption from the requirement of a tolerance.

Vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9), minimum average molecular weight 6,700, is exempted from the requirement of a tolerance when used as an inert ingredient (emulsion stabilizer, film-forming agent) for pesticides applied to growing crops or to raw agricultural commodities after harvest. The inert will constitute no more than 20 percent by weight of any pesticide formulation. Registration of each new pesticide formulation incorporating this dispersing agent must be supported by residue data for the active ingredient(s).

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[FHWA Docket No. MC-91-2]

RIN 2125-AC67

Federal Motor Carrier Safety Regulations; General; Emergency Relief Exemption

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to exempt from parts 390 through 399 motor carriers and drivers operating in interstate commerce that are providing direct assistance as part of a disaster relief effort. This rule would also remove the requirement for

motor carriers to request authorization from the FHWA prior to providing disaster relief. This rule would not relieve motor carriers from having the required minimum levels of financial responsibility coverage prior to operating in interstate commerce, including motor carriers previously operating solely in intrastate commerce.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–91–2, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing data compatible with either WordPerfect or WordStar for IBM systems or Microsoft Word or WordPerfect or WordStar for Apple MacIntosh systems. Commenters should clearly label submitted disk with the software format used (e.g. WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blount, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since the inception of the FMCSRs under the Interstate Commerce Commission, the regulations governing truck and bus safety have always contained provisions to permit motor carriers to provide transportation and resource relief in the event of a major disaster. Disasters often cause loss of life, human suffering, and property loss while disrupting the normal functioning of government, businesses, and communities. Recent disasters, such as Hurricane Hugo, highlight the critical need to ensure that emergency relief services be provided quickly and easily.

Utility companies, disaster relief organizations, insurance companies, religious and civic groups and others often render emergency relief services. Such groups are now required to comply with the FMCSRs, when operating commercial motor vehicles in interstate commerce, or with compatible State regulations when operating in intrastate commerce. In the wake of disasters, organizations that normally operate within a single State may be called upon to provide emergency assistance in another State. However, these organizations may be unable to provide such assistance without violating the FMCSRs.

Discussion

Currently, section 390.23 of the FMCSRs sets forth a procedure by which any interstate motor carrier that has been requested to provide relief services due to disasters such as floods, earthquakes, or pestilence, or governmentally declared emergencies may request relief from the hours of service requirements of § 395.3(b), regarding maximum driving and on-duty time. Any motor carrier seeking relief from § 395.3(b) must contact the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located, and provide full details of the disaster or emergency situation. Based on the information received from internal and external sources, the Regional Director makes a determination if relief from § 395.3(b) is appropriate. The Regional Director either denies or grants the request along with any restrictions which may be considered necessary. The Regional Director does not have the authority to exempt a motor carrier from any other requirements of the FMCSRs (e.g., driver qualifications, vehicle standards, etc).

Within 24 hours after an exemption has been granted by telephone, the motor carrier must submit a formal written request to the Regional Director, providing full details of the relief operation, the regulatory exemption sought, and the period of time for which the exemption from the FMCSRs is requested. All approvals of regulatory relief may be subject to special conditions (e.g., that all excess hours must be spread evenly among all drivers).

In addition, section 395.12 exempts from the hours of service regulations any interstate motor carrier transporting passengers or property to or from any section of the country with the object of providing relief in the case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other disaster.

Because full compliance with the FMCSRs during disaster relief work would often delay or interrupt efforts to protect lives, property, and public health, the FHWA is proposing to amend parts 390 and 395 of the FMCSRs to remove nearly all regulatory requirements otherwise applicable to motor carriers and drivers who are actively participating in an "emergency relief" effort associated with a disaster.

This rule would be issued under the authority of section 206(f) of the Motor Carrier Safety Act of 1984 [Pub. L. 98–554, title II, section 206(f), 98 Stat. 2832, 2835, codified at 49 U.S.C. app. 2505(f) (1988)]. Section 206(f) reads in part as follows: "After notice and an opportunity for comment, the Secretary [of Transportation] may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." This waiver authority has been delegated to the Federal Highway Administration [49 CFR 1.48(aa) (1990)].

The waiver of the FMCSRs authorized by this rule would enable motor carriers and drivers involved in disaster relief work to devote all of their time and effort to those critical tasks. Lives often depend on the rapid restoration of essential services (e.g., power, water, and sewer lines) or the immediate delivery of essential supplies. While the FMCSRs are important in maintaining the safety of commercial motor vehicle operations, a disaster may present greater risks to public health and safety at that place and time. Thus, the FHWA is proposing to waive the application of the FMCSRs to motor carriers providing emergency relief services during times of disaster as declared by the President or a Governor of a State.

However, we are also proposing that compliance with the FMCSRs not be suspended for longer than 30 consecutive calendar days because of the risks associated with the accumulation of mechanical deficiencies, human fatigue, and potential inattention to operational safety practices. Except in truly extraordinary situations, to be decided on a case-by-case basis, the exemption from the FMCSRs would be limited to 30 consecutive calendar days, or the duration of the emergency, whichever ends first.

This proposal would permit a motor carrier to provide emergency relief service without complying with the FMCSRs only if:

(1) There is a publicly declared disaster needing emergency relief, and

(2) The motor carrier is directly engaged in providing assistance to disaster sites or locations.

In other words, a disaster would have to occur and the President of the United States, a Governor of a State, or a representative acting in either the President's or Governor's behalf, must publicly declare that Federal or State assistance is needed to supplement State and local efforts to save lives, to protect property and public health and safety or to lessen the impact of a disaster in any part of the United States. In general, disaster declarations are in the form of a public announcement (e.g., in the newspapers, on the radio, or television, or other public announcement to the general public). Normally such declarations identify the type of disaster occurring, the specific location which has been declared as the disaster area that needs assistance, and when the specific disaster occurred.

Furthermore, only motor carriers and drivers providing direct relief to the disaster would be permitted to use this exception. Included would be operations such as transporting persons or materials to or from a disaster area and relief operations within a disaster area. Returning to the motor carrier's principal place of business (or primary operating base) would also be included in this exemption. However, the participating motor carrier and its drivers would be required to return to the motor carrier's principal place of business in a safe manner, in furtherance of the intent and purpose of the FMCSRs.

This rule would not require that motor carriers or drivers involved in the relief effort be individually identified (e.g., that a specific motor carrier be requested by public disaster relief authorities to transport a shipment of blankets to flood victims or that a specific utility company be asked to supplement the capabilities and work force of a utility company in a disaster area). Rather, if there is a declared disaster, then a motor carrier or driver who elects to take part in the effort would be afforded this exception. However, in the event the FHWA later discovers what appear to be violations of the FMCSRs, it would be the responsibility of the motor carrier to document sufficiently the claim that it was conducting disaster-related emergency relief operations and was, therefore, exempt from the regulations. This proposal does not specify the type of documentation a motor carrier must provide. However, such documentation could include, among other things, a record of the declaration of a disaster and a complete description of the relief provided including equipment, supplies and drivers used, and the dates and times of such operation. Comment is requested on whether particular documentation should be required and, if so, what type.

The rule would provide regulatory relief for the duration of the emergency or for a maximum of 30 days, whichever is less, without requiring prior approval from FHWA. The 30-day period would start when a disaster is declared by a Governor or the President, not when a motor carrier initiates its emergency relief operations. For example, if an official declaration of a disaster is made on May 1, a motor carrier commencing relief operations on May 10 will have to the end of the emergency or 21 days, whichever occurs first, to operate under this exemption. The FHWA believes that most emergencies necessitating immediate regulatory relief could be addressed within a period of 30 days or less. In those instances where longer periods of relief are necessary, we believe that the Regional Director of Motor Carriers can best ascertain the need to extend the exception for an additional limited period of time.

If more time is needed than the initial 30-day period, a motor carrier would be required to request an extension by contacting the FHWA Regional Director of Motor Carriers in the region where the motor carrier has its principal place of business. Any motor carrier or driver seeking to extend the 30-day time period of the exemption would be required to obtain approval from the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located, before the expiration of the 30-day period. The motor carrier would be required to give full details of the additional relief requested. The Regional Director would determine if additional relief from the regulations is necessary to enhance the motor carrier's ability to provide emergency service to the public. The Regional Director would establish a new time period for the exemption and place any restrictions that may be deemed necessary on the extension of the exemption.

The intent of this proposal is to facilitate quick and effective responses by motor carriers directly involved in providing emergency relief to disaster areas. The FHWA requests comments on this 30-day period of time. Is the time period of sufficient length to respond effectively to most disasters? Shoud other criteria be used to establish the time period? If so, what?

For the purposes of this exemption, the FHWA is proposing to define the term "direct assistance" to mean transportation and other services provided by a motor carrier or its drivers incident to the immediate restoration of essential services or supplies. It would not include transportation related to long-term rehabilitation of damaged physical infrastructure, or routine commercial deliveries, after the initial threat of loss of life or property has passed.

The term "disaster" would be defined to mean "any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, snow storm, drought, forest fire, explosion, blackout or other occurrences, natural or man-made, as determined by the President or a Governor of a State." This exception would not be used to provide reconstruction assistance after the initial threat of loss of life or property has passed and immediately needed services have been restored. The FHWA believes that this proposed definition is consistent with the current FMCSRs and with the Department of Transportation's publication, "Transportation Preparedness Planning, Glossary of Terms and Abbreviations," July 1990, (p. 1945.1B).

The term "emergency relief" is proposed to be defined for the purposes of this rule as "An operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to save lives and property, to protect public health and safety or to lessen a disaster as declared by the President of the United States or a Governor of a State, or his or her duly authorized representative."

With the implementation of this proposal, there would no longer be a need for § 395.12 which currently addresses relief from the regulations. Therefore, it is proposed that § 395.12 be removed and reserved.

Implementation of this proposal would relieve interstate and intrastate motor carriers and their drivers from the requirements of parts 390 through 399 of the FMCSRs when providing direct assistance, in interstate commerce to a declared disaster, in an emergency relief operation. The regulatory applicability and requirements of parts 350 through 389 would be unchanged by this rule, and any motor carrier or driver operating under this exemption would still be required to comply with the regulations in those parts whenever applicable. Intrastate motor carriers operating in interstate commerce must meet the required minimum levels of financial responsibility, as required by 49 CFR part 387, prior to any interstate operations.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. It is anticipated that the economic impact of this rulemaking will be minimal. For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action will not have a signficant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Nothing in this document preempts any State law or regulation. This rule, if adopted, will not limit the policymaking discretion of the States. States would not be required as part of the Motor Carrier Safety Assistance Program to adopt this proposal for intrastate safety regulations, but they will have to adopt this amendment for the enforcement of interstate operations. The FMCSRs establish minimum safety requirements which, at the present time, may be supplemented by the States, although not by the adoption of inconsistent regulations. The issues addressed in this proposed rule therefore have no federalism implications. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposal does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action would make it appreciably easier for intrastate or interstate motor carriers to respond to declared "emergency relief" situations by removing the need for prior application and approval as currently required by the regulations. Therefore, this action should reduce the reporting burdens for the motor carrier industry.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 395

Disaster assistance, Driver qualifications, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

Issued on: May 22, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is proposing to amend parts 390 and 395 of title 49, Code of Federal Regulations, to read as set forth below:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.5 [Amended]

2. Section 390.5 is amended by adding the definitions of *Direct assistance, Disaster,* and *Emergency relief,* placing them in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, medical care, electricity, water, and sewer) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure, or routine commercial deliveries after the initial threat to life and property has passed. Upon termination of the relief services the motor carrier and driver must return to the principal place of business by the most direct route and in a safe manner.

Disaster means any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, snow storm, drought, forest fire, explosion, blackout or other occurrences, natural or man-made, as determined by the President of the United States or a Governor of a State.

* * * * *

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives and property, to protect public health and safety, or to lessen a disaster as declared by the President of the United States or a Governor of a State, or his or her duly authorized representative.

* * * * *

3. In § 390.23, is revised to read as follows:

§ 390.23 Relief from regulations.

Parts 390 to 399 of this subchapter shall not apply to transportation performed by any motor carrier, or driver, operating a commercial motor vehicle in an "emergency relief" effort associated with a disaster as defined in § 390.5. This emergency relief exemption may be utilized only when a disaster has occurred and the President of the United States, a Governor of a State, or his or her duly authorized representative has publicly declared that Federal or State assistance is needed to supplement State and local efforts to save lives and property, to protect public health and safety, or to lessen a disaster in any part of the United States. Except as provided in § 390.25, this exception shall not exceed the length of the emergency or 30 days from the time of the initial declaration of a disaster, whichever is less.

4. Section 390.25 is added to read as follows:

§ 390.25 Extension of relief from regulations—disaster-related emergencies.

Any motor carrier or driver seeking to extend the 30-day time period of the exemption contained in § 390.23 shall obtain approval from the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located, before the expiration of the 30-day period. The motor carrier shall give full details of the additional relief requested. The Regional Director shall determine if additional relief from the regulations is necessary to enhance the motor carrier's ability to provide emergency service to the public. The Regional Director shall establish a new time period for the exemption and place any restrictions that may be deemed necessary on the extension of the exemption.

PART 395—[AMENDED]

5. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 App. 2505; and 49 CFR 1.48.

§ 395.12 [Removed]

6. Section 395.12 is removed and reserved.

[FR Doc. 91-12622 Filed 5-28-91; 8:45 am]
BILLING CODE 4910-22-M

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49 CFR Part 395

[FHWA Docket No. MC-91-3]

RIN 2125-AC66

Hours of Service of Drivers; Exception for Emergency Relief Situations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is seeking comments on a proposal to amend the drivers hours-of-service requirements of the Federal Motor Carrier Safety Regulations (FMCSRs). This proposal would exempt from certain hours of service requirements those individuals or business entities engaged in emergency relief operations as defined in this proposal. The exemption would be used primarily by interstate public utilities, motor carriers that deliver fuel, and drivers of commercial motor vehicles responding to an emergency situation at the request of State or local government officials. The FHWA is proposing this rulemaking in response to requests and petitions for regulatory relief by public utilities and fuel suppliers. This proposal, if adopted, would provide needed flexibility to those businesses when responding to an emergency.

DATES: Written comments must be received on or before July 15, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-91-3, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing data compatible with either WordPerfect or WordStar for IBM systems or Microsoft Word or WordPerfect or WordStar for Apple MacIntosh systems. Commenters should clearly label submitted disk with the software format used (e.g. WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blount, Officer of Motor Carrier Standards, (202) 366-2981, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking is being issued under the authority of section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, title II, section 206(f), 98 Stat. 2832, 2835, codified at 49 U.S.C. app. section 2505(f) (1988)). Section 206(f) reads in part as follows: "After notice and an opportunity for comment, the Secretary (of Transportation) may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." This waiver authority has been delegated to the Federal Highway Administration [49 CFR 1.48(aa) (1990)].

Since the inception of the FMCSRs under the Interstate Commerce Commission, the regulations governing truck and bus safety have always contained provisions and a mechanism for motor carriers to provide some type of transportation and resource relief in the event of an emergency. Emergencies require immediate attention and prompt action. Under such conditions the FHWA believes that a limited exemption to permit motor carriers to expeditiously render emergency assistance to affected jurisdictions, communities, and entities is needed.

The FHWA is proposing to provide the regulatory relief from the hours-of-service requirements primarily but not exclusively for the drivers of vehicles belonging to interstate public utilities and motor carriers that deliver fuel. This regulatory relief would enable motor carriers subject to the FMCSRs to respond to an emergency situation at the request of State or local government officials, even though the drivers may be exceeding the hours-of-service requirements of the FMCSRs. The FHWA is proposing this action as a result of instances in which response to an emergency situation by a public utility or fuel supplier operating across State lines has been substantially delayed because the only available drivers had run out of driving time, according to the requirements of the Hours-of-Service regulations. The FHWA believes that this limited exemption would not compromise the safe operations of commercial motor vehicles.

The term "emergency situation," within the context of this proposal, means "any occasion or instance in which relief assistance is needed to supplement State or local efforts and capabilities to save lives, protect against substantial loss of property, protect the public health and safety, and/or to lessen or avert the consequence of a catastrophe."

Currently, the hours-of-service regulations state in part that no motor carrier shall permit or require any driver to:

(1) Drive more than 10 hours following 8 consecutive hours off duty; or

(2) Drive for any period after having been on duty 15 hours following 8 consecutive hours off duty; or

(3) Drive for any period after being on duty more than 60 hours in any 7 consecutive days, except if a carrier operates every day of the week, in which case the limit is 70 hours in an 8 consecutive days.

Exception: This requirement shall not apply to any driver driving a motor vehicle in the State of Alaska, or to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

This proposed emergency relief rule would provide motor carriers and their drivers regulatory relief from the hours-

of-service requirements to respond to emergency situations at the request of State or local government officials, including law enforcement or emergency response officials.

Previous request

The FHWA has received several requests from motor carriers to revise or interpret the FMCSRs to permit relief from the hour-of-service requirements under certain circumstances. The Virginia Electric and Power Company (Virginia Power), Richmond, Virginia, petitioned the Secretary of Transportation for a clarification of 49 CFR 395.12 as a means of obtaining regulatory relief from the hours-of-service requirements. Virginia Power requested that emergency restoration of electrical power be considered a disaster or other calamitous visitation. In addition, representatives of the Kansas City Power and Light Company, Kansas City, Missouri, made a presentation to the FHWA regarding its emergency operation procedures and requested that such operations be exempted from the maximum hours-of-service requirements.

The National Propane Gas Associations (NPGA) wrote to the Secretary of Transportation, requesting that a mechanism be established to issue blanket exemptions from the hours-of-service rules for the propane gas industry. The NPGA argued that the industry needs the exemption to meet possible emergency shortages and demands caused by the embargo of Iraq. The New England Fuel Institute (NEFI) petitioned the Secretary of Transportation for a waiver of the maximum hours-of-service. The NEFI asserted that drivers for its member companies do little driving compared to their overall work duties. According to NEFI, the drivers spend approximately 20–25% of the work time driving. The rest of their time is spent loading fuel oil into their trucks and delivering it (off-loading into fuel receptacles) to residences and businesses. The NEFI argued that the drivers' work duties are similar to those of driver-salesmen who are currently granted limited relief from the hours-of-service requirements. Consequently, the NEFI requested that its drivers be classified as driver-salesmen. This request was limited to the heating season, specifically the period from December 1 to February 28 of each year.

Discussion

The FHWA recognizes that there are times when emergency situations and endanger individuals and/or the public's safety and health. The agency also recognizes that, in many cases, the FMCSRs provide no relief from the hours-of-service regulations which would enable a motor carrier to respond immediately to a call for help from State or local authorities. For example, public utilities have asserted that there are times when their drivers, having completed their normal work shift for the day or week, are requested by law enforcement or other emergency response official to respond to emergency situations on very short notice. There is usually very little time to summon personnel from their homes, off-duty activities, or other job sites. These emergencies require immediate action and can often be met only by using a driver who has completed his or her work time or who is currently on duty and nearing the end of his or her work shift.

Drivers for public utilities and fuel suppliers operate in relatively restricted geographical areas. Most of their driving is done over short distances, often at less than highway speeds. These drivers in fact spend the majority of their on-duty time in a nondriving capacity. Such driving and work patterns would not change when responding to emergencies. The nature of emergency relief work would usually require drivers for other types of motor carriers to operate in a similar manner: Although remaining on duty somewhat longer than normal, they would tend to drive infrequently, for short distances at low to moderate speeds, with substantial intervals between trips. We believe that the accumulation of fatigue which the hours of service regulations are designed to prevent will be minimized by this varied pattern of activity. The FMWA has therefore determined that the exemption proposed by this rule would not adversely affect the safe operation of commercial motor vehicles. Furthermore, the exemption would not be contrary to the public interest since emergency relief must be undertaken quickly and maintained until the immediate crisis has passed. The FHWA waiver of the maximum hours of service limitations will permit motor carriers and their drivers to render immediate and sustained emergency assistance to affected States and communities.

Proposal

The FHWA is proposing to amend part 395 by establishing an exemption from the requirements of § 395.3(a) and (b) for response to emergency situations under the following conditions:

(1) The driver must be in full compliance with the FMCSRs at the time of the request;

(2) There must be no other drivers with unused driving time available at the same location;

(3) The request for emergency response must be made by a State or local government official, who may be a law enforcement or emergency response official;

(4) Upon completion of the emergency response operations, the driver must go off duty for a minimum of 8 consecutive hours or until sufficient time has accrued for the driver to meet the requirements of paragraph 395.3(b) of this section (to ensure that drivers who have had their rest period interrupted by a request for emergency service will be afforded ample time to recuperate from that interruption and be rested enough to operate a commercial motor vehicle safely when they return to driving status); and

(5) A notation of the time, type of emergency, and the name, title, address and telephone number of the public official making the request must be recorded upon the applicable record of duty status required to be maintained in compliance with § 395.8 of this subpart.

Comments Are Specifically Requested on the Above-Mentioned Conditions

The FHWA proposes that commercial motor vehicle operators who respond to emergency situations at the request of a responsible public official be temporarily exempted from the following hours of service requirements:

(1) The 10-hour rule (§ 395.3(a)(1));

(2) The 15-hour rule (§ 395.3(a)(2)); and

(3) The 60- or 70-hour rule (§ 395.3(b)).

In addition, the FHWA proposes to revise § 395.8(l) regarding the 100 air-mile exemption from maintaining a driver's record-of-duty status. Under the proposed rule, motor carriers and drivers that normally operate under this exemption shall be able to continue to do so when they exceed the maximum hours limitations of this section when participating in an emergency relief operation. This proposal is intended to spare those motor carriers and drivers additional paperwork requirements because of their emergency relief work. However, individuals who are required to fill out a record-of-duty status (a log) must continue to do so and must make a notation on their log that they were providing emergency relief. This notation must include the time, type of emergency, and the name, title, address, and telephone number of public official making the request.

The FHWA specifically requests comments on the following questions:

1. Should the motor carrier be required to report emergency operations to the FHWA before and/or after the fact?

2. Should there be any additional or specific documentation requirements (e.g., written certification of the "emergency situation" recorded or maintained on file)?

3. For what period of time should the motor carrier and driver be permitted to use this exemption?

4. Should motor carriers involved be required to utilize all drivers with available hours before using drivers who have exceeded or will exceed the hours of service requirements?

5. What safeguards if any, should be incorporated into the rule to ensure that a motor carrier complies with this exception?

6. Should some type of documentation be required to prevent the driver from being placed out of service by other State or Federal enforcement personnel when responding to an emergency situation? If so, what type?

If there are areas of concern not addressed in this Notice of Proposed Rulemaking (NPRM), please include them with your responses.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency has evaluated the effects of this rule on small entities. This proposal would remove hours of service limitations to enable responders to emergencies, who must use commercial motor vehicles, to provide assistance in a timely and effective manner. Small entities would be able to provide emergency assistance to communities experiencing hardship. The focus of this amendment would be to make emergency assistance available which, but for this change, might be unavailable or available at a greater cost or after some delay in time. This amendment would remove a restriction, and would not have a significant economic impact on small entities which might provide emergency assistance under this exemption.

For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles, criteria, and requirements of Executive Order 12612.

Since nothing in this document preempts any State law or regulation, this notice of proposed rulemaking has no federalism implications.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action would make it appreciably easier for interstate motor carriers to respond to an emergency situation upon the request of a law enforcement or emergency response official by reducing the need for prior application and approval, as presently required by the regulations. This action should therefore reduce the reporting burdens for the motor carrier industry.

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act. The agency has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 395

Motor carriers, Highway safety, Driver's hours-of-service, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety)

Issued on: May 22, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 395 to read as set forth below:

PART 395—[AMENDED]

1. The authority citation for 49 CFR part 395 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. Section 395.3 is amended by revising paragraph (a) introductory text and adding a new paragraph (g) to read as follows:

§ 395.3 Maximum driving and on-duty time.

(a) Except as provided in paragraphs (c), (e) and (g) of this section and in § 395.10, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

* * * * *

(g) The provisions of paragraphs (a) and (b) of this section shall not apply with respect to motor carriers or drivers of commercial motor vehicles while such vehicles are being used to respond to an emergency situation at the request of a State or local government official having jurisdiction and authority to respond to emergency situations, including law enforcement or emergency response officials. A motor carrier and driver must meet the following conditions in order to comply with this paragraph:

(1) The driver must be in full compliance with the FMCSRs at the time of the request;

(2) There must be no other drivers with unused driving time available at the same location;

(3) The request for emergency response must be made by a State or local government official, including a law enforcement or emergency response official; and

(4) Upon completion of the emergency response operations, the driver must go off duty for a minimum of 8 consecutive hours and until sufficient time has accrued for the driver to meet the requirements of paragraph (b) of this section; and

(5) A notation of the time, type of emergency, and the name, title, address, and telephone number of public official making the request, must be recorded upon the applicable record of duty status required to be maintained in compliance with § 395.8 of this subpart.

3. Section 395.8 is amended by adding a new paragraph (l)(3) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(l) * * *

(3) Emergency relief situations. The exemption provided by this paragraph is not altered when the driver of a commercial motor vehicle responding to an emergency situation at the request of a State or local government official having jurisdiction and authority for responding to that emergency situation violates the requirements of § 395.8(l)(1)(ii), (iii), and (iv). A notation of the time, type of emergency, and the name, title, address, and telephone number of the public official making the request shall be recorded upon the time record required to be maintained in compliance with this paragraph.

* * * * *

[FR Doc. 91-12623 Filed 5-28-91; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-1123]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed action under Flexible Area Action System.

SUMMARY: NOAA issues this notice to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering Flexible Area Action System #5 under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a large concentration of Atlantic cod that are smaller than the legal minimum landing size but are being caught and wastefully discarded at sea. The areas affected are located offshore of Massachusetts, New Hampshire, and Maine and are generally described as Stellwagen Bank and Jeffreys Ledge. Closure of these areas to various types of gear is contemplated. However, other alternatives under consideration include specifying mesh size or prohibition of specific gear types.

DATES: Comments on the proposed action must be received by June 12, 1991.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact finding report and the Council's impact analysis will be available on June 6, 1991, upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact finding report, and the Council's impact analysis to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, (NMFS, Resource Management Specialist), 508-281-9272.

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26, as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and implemented by regulations effective December 19, 1989 (54 FR 52803, December 22, 1989). Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal or spawning fish. As part of this process, the Regional Director will initiate a fact finding investigation of the alleged discard problem. The Council will also provide an impact analysis of alternative measures that might be implemented under this action.

The Council's Multispecies Committee (Committee) received a request for action after it was reported that significant discards of sublegal (less than 19 inches in length) Atlantic cod were occurring in the vicinity of Stellwagen Bank and Jeffreys Ledge. This event has also occurred in previous years. The Committee has initiated this action to determine the extent of the problem and whether it is appropriate to take action. Both the Regional Director's fact finding report and the Council's impact analysis will be available by June 6, 1991, at the Council Office (see **"ADDRESSES"**). The Committee will hold a public hearing on June 13, 1991, at 7 p.m. at the National Marine Fisheries Service (Northeast Region), Gloucester, Massachusetts. A second public hearing will be held on June 14, 1991, at 9:30 a.m. at the Ramada Inn, Rt. 1A, East Boston, Massachusetts, in conjunction with a meeting of the Committee to solicit comments on the proposed action. More specific information is below.

(1) The areas of the proposed action are Stellwagen Bank off the Massachusetts coast and Jeffreys Ledge off the Maine coast. The Stellwagen Bank area is defined by the following coordinates: 42°34.0' N. Latitude, 70°23.5' W. Longitude; then to 42°28.8' N. Latitude, 70°39.0' W. Longitude; then to 42°18.6' N. Latitude, 70°22.5' W. Longitude; then to 42°05.5' N. Latitude, 70°23.3' W. Longitude; then to 42°34.0' N. Latitude, 70°23.5' W. Longitude;.

Jeffreys Ledge is defined by the following coordinates: 43°12.7' N. Latitude, 70°00.0' W. Longitude; then to 43°09.5' N. Latitude, 70°08.0' W. Longitude; then to 42°57.0' N. Latitude, 70°08.0' W. Longitude; then to 42°52.0' N. Latitude, 70°21.0' W. Longitude; then to 42°41.5' N. Latitude, 70°32.5' W. Longitude; then to 42°34.0' N. Latitude, 70°26.2' W. Longitude; then to 42°55.2' N. Latitude, 70°00.0' W. Longitude; then back to 43°12.7' N. Latitude, 70°00.0' W. Longitude.

(2) The principal species that may be affected by any action will be Atlantic cod, northern shrimp, pollock, winter flounder, American plaice (dab), and haddock. To a lesser extent, silver hake, angler (monkfish), and American lobster may be affected.

(3) The types of gear that could be affected by this action are all types of gear capable of catching groundfish, including, but not limited to, otter trawls, midwater trawls, gillnets, scallop dredges, and hook-and-line gear, both commercial and recreational.

(4) The fisheries that potentially will be impacted are the commercial and recreational fisheries that utilize gear capable of catching groundfish that operate in the area of the proposed action.

(5) The principal ports that will be affected are Boston, Massachusetts; Gloucester, Massachusetts; Provincetown, Massachusetts; Portland, Maine; and Portsmouth, New Hampshire.

(6) The expected duration of the action is up to 180 days. If implemented as early as June 14, 1991, the action could last until December 11, 1991.

(7) The Committee expects to recommend that those areas that are determined to have large concentrations of small codfish (less then 19" in lenth) be closed to fishing with the types of gear described in (3) above.

Other actions that might be considered are (a) a minimum mesh size in the trawl and/or gillnet fisheries, (b) a prohibition of mobile net gear only, and (c) a prohibition of all fishing except with hook gear.

(8) The Council will begin analyzing the potential impacts from possible action upon publication of this notice.

(9) The Council's impact analysis will be available on June 6, 1991.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: May 23, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12638 Filed 5-23-91; 1:12 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Cost of Production Review Board: Call for Membership Nominations

Under authority of section 1005 of the Agriculture and Food Act of 1981, the Secretary of Agriculture established the National Agricultural Cost of Production Standards Review Board (Advisory Committee). Public Law 101–624 extended the authority for the Advisory Committee through September 30, 1995. The Advisory Committee was renewed by the Secretary of Agriculture on April 8, 1991. The Advisory Committee reviews the adequacy of the parity formulae; advises the Secretary as to whether the cost of production methodology used by the Department accurately and fairly represents the cost of production incurred by producers; makes such recommendations to the Secretary as the Committee deems appropriate, including ways of improving the cost of production methodology and the parity formulae; and reviews the adequacy, accuracy, and timeliness of the cost of production methodology used by the Department.

The Advisory Committee will consist of eleven members appointed by the Secretary. Seven members of the Board will be chosen from a pool of nominees who are, individually or as a group, engaged in the commercial production of each of the program crops (corn, barley, oats, grain sorghum, wheat, rice, and upland cotton) and in one or more of the various major agricultural commodities produced in the United States. Three members of the Board will be chosen from a pool of nominees who are knowledgeable about cost of production by virtue of their education or experience and may be drawn from the fields of agricultural economics, banking, finance, accounting, or related areas. One member will be an employee of the Department. To insure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include minorities, women, and persons with disabilities. Members of the Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.

Nominations are needed for persons to serve on the Advisory Committee to replace members whose terms expired with the Food Security Act of 1985. The terms of all members, with the exception of the member who is an employee of the Department, will be for four years or until the expiration of authority for the Committee, whichever comes earlier. Any person appointed to fill a vacancy on the Committee will be appointed only for the unexpired term of such person's predecessor.

Persons interested in serving on the Advisory Committee, or persons interested in nominating persons to serve, should contact John E. Lee, Jr., Administrator, ERS, room 1226, 1301 New York Avenue, NW., Washington, DC 20005–4788, in writing (please mark Attention: COP Review Board), and request a copy of Form AD–755, which must be completed and submitted to the Administrator at the above address not later than August 1, 1991.

The final selection of committee members will be made by the Secretary.

John E. Lee, Jr.,
Administrator.

[FR Doc. 91–12562 Filed 5–28–91; 8:45 am]
BILLING CODE 3410–18–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 522]

Resolution and Order Approving the Application of the City of San Antonio, Texas, for Expansion of Foreign-Trade Zone 60, and for Non-Manufacturing Subzone Status at the Plants of Bausch and Lomb (Sunglasses), Colin Medical Instruments (Medical Equipment), and Friedrich Air Conditioning and Refrigeration (Air Conditioners)

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 13, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of San Antonio, Texas, grantee of FTZ 60, filed with the Foreign-Trade Zones Board (the Board) on May 15, 1990, requesting authority to expand and reorganize its general-purpose zone and requesting special-purpose subzone status for the San Antonio area plants of Bausch and Lomb, Inc. (assembly), Colin Medical Instruments Corporation (non-manufacturing), and Friedrich Air Conditioning and Refrigeration Company (non-manufacturing), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application. The new general-purpose zone plan would involve six sites with activation limits at Site Nos. 3, 4, 5, and 6 of 225 acres each.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Expand Foreign-Trade Zone 60 and to Establish Foreign-Trade Subzones in the San Antonio, Texas, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To

provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board is empowered to authorize the expansion of zones when additional facilities are needed (15 CFR 400.607);

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot service the specific use involved, and where a significant public benefit will result;

Whereas, the City of San Antonio, Texas, grantee of Foreign-Trade Zone 80, has made application (filed May 15, 1990, FTZ Docket 18–90, 55 FR 22052) in due and proper form to the Board for authority to expand and reorganize its general-purpose zone at sites in San Antonio and Bexar County, Texas, and to establish special-purpose subzones at the sunglasses assembly and distribution facility of Bausch and Lomb, Inc., the medical equipment distribution (non-manufacturing) facility of Colin Medical Instruments Corporation, and, the air conditioning equipment distribution (non-manufacturing) facility of Friedrich Air Conditioning and Refrigeration Company, all located in the San Antonio area.

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed May 15, 1990, the Board hereby authorizes the expansion of FTZ 80 and the establishment of subzones at the Bausch and Lomb, Colin Medical Instruments and Friedrich plants, designated on the records of the Board as Foreign-Trade Subzone Nos. 80A, 80B and 80C, respectively, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grantee shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 17th day of May, 1991, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–12648 Filed 5–28–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–559–802]

Industrial Belts and Components and Parts Thereof From Singapore; Preliminary Results of Antidumping duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Singapore. The review covers one manufacturer and exporter of this merchandise to the United States, and the period February 1, 1989 through May 31, 1990. As a result of the review, the Department has preliminarily determined that dumping margins exist.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Jeffrey Laxague, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 25315) the antidumping duty order on industrial belts from Singapore. On June 29, 1990, the petitioner requested that we conduct an administrative review of the February 1, 1989 through May 31, 1990 period. We published a notice of initiation of the antidumping administrative review on July 26, 1990 (55 FR 30490). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1675).

Scope of the Review

Imports covered by the review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Singapore. The merchandise covered by this review includes certain industrial V-belts used for power transmission. These include V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links. This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the period of review, the merchandise was classifiable under Harmonized Tariff System ("HTS") subheadings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer and exporter of industrial belts from Singapore to the United States and the first review period, beginning on February 1, 1989 and ending on May 31, 1990.

United States Price

In calculating the United States price, the Department used purchase price or

exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act (19 U.S.C. 1677a(b) & (c)), as appropriate. United States price was based on the packed c.i.f. price to both unrelated and related purchasers in, or for exportation to, the United States. We made adjustments, where applicable, for U.S. foreign inland freight, U.S. duties, U.S. and foreign brokerage, ocean freight and marine insurance, repacking in the United States, commissions, credit expenses, discounts, and indirect selling expenses. No other adjustments were allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act (19 U.S.C. 1677b) as sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed c.i.f. or f.o.b. price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight, discounts, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Company	Period of review	Margin (percent)
Mitsuboshi Belting (Singapore) Pte. Ltd.	2/1/89-5/31/90	4.81

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), a cash deposit of estimated antidumping duties based on the above margins shall be required. The cash deposit rate for all other exporters/producers shall be 4.81 percent for shipments the industrial belts covered by this review. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulations (19 CFR 353.22(c)(5)).

Dated: May 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12649 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-702]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela for the period January 1, 1989 through December 31, 1989. There are no known unliquidated entries from the review period. We preliminarily determine that the rate of cash deposit of estimated countervailing duties will remain unchanged at 5.50 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 32279) of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela (53 FR 31904; August 22, 1988). On August 31, 1990, the Government of Venezuela requested an administrative review of the order. We initiated the review, covering the period January 1, 1989 through December 31, 1989, on September 24, 1990 (55 FR 39032). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of its last administrative review on April 8, 1991 (56 FR 14232).

Scope of Review

Imports covered by this review are shipments of certain electrical conductor aluminum redraw rod from Venezuela, which is wrought rod of aluminum electrically conductive and containing not less than 99 percent of aluminum by weight. This merchandise is currently classifiable under item numbers 7604.10.3010, 7604.10.3050, 7604.29.3010, 7604.29.3050, 7605.11.0030 and 7605.21.0030 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and seven programs.

In its questionnaire response, the Government of Venezuela reported no shipments of the subject merchandise to the United States during the review period. We subsequently confirmed with the United States Customs Service that there were no known unliquidated entries of this merchandise from the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine that there are no known unliquidated entries of the subject merchandise exported to the United States from the period January 1, 1989 through December 31, 1989. Given that there has been no demonstration of any program-wide change, the rate of cash deposit of estimated countervailing duties will remain unchanged at 5.50 percent *ad valorem*.

Therefore, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 5.50 percent of the f.o.b. invoice price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 21, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12650 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron from Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 11, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil for the period January 1, 1989 through December 31, 1989. We have now completed that review and determine the net subsidy to be 0.24 percent *ad valorem*. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 5401) the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil (45 FR 23045). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Brazilian pig iron of basic foundry, malleable, and low phosphorous grades. During the review period, such merchandise was classifiable under item numbers 7201.10.00, 7201.20.00, 7201.30.00 and 7206.10.00 of the Harmonized Tariff Schedule. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and ten programs: (1) CACEX Preferential Working Capital Financing for Exports, (2) Income Tax Exemption for Export Earnings, (3) BEFIEX and CIEX, (4) PROEX and PROSIM, (5) Preferential Financing for the Storage of Merchandise, (6) FST and EGF Financing, (7) Accelerated Depreciation for Brazilian-Made Capital Goods, (8) FINEX, (9) FUNPAR, and (10) FINEP.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Consider U.S.A., Inc., an importer.

Comment 1: Consider states that the exemption of export financing from the tax on financial transactions (the IOF tax) is not a subsidy. Consider claims that, in calculating the interest differential under the program for preferential working capital financing for exports, the exemption from the IOF tax for loans received under CACEX should not be considered. The IOF is an indirect tax on the financing used for the purchase of physically incorporated inputs. The non-excessive rebate of an indirect tax borne by exported merchandise is not a subsidy.

Department's Position: We addressed this issue in the last administrative review of this countervailing duty order, as well as in numerous administrative reviews of other countervailing duty orders on Brazilian products. See, *e.g.*, Certain Castor Oil Products from Brazil; Final Results of Administrative Review of Countervailing Duty Order (September 8, 1983; 48 FR 40534). The Brazilian government has provided neither new evidence nor new arguments that convince us to reconsider our position on this issue.

Comment 2: Consider claims that the benefits derived from the income tax exemption for export earnings should be allocated over total revenue rather than export revenue. Under this program, a Brazilian exporter receives an exemption from income tax liabilities at the end of the fiscal year based upon the ratio of export to total revenue, provided that the firm has made an overall profit. Consider argues that, because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the operations of the whole firm and not just the exports.

Department's Position: We have considered and rejected this argument in numerous administrative reviews of other countervailing duty orders on Brazilian products. See, *e.g.*, Certain Scissors and Shears from Brazil; Final Results of Administrative Review of Countervailing Duty Order (March 10, 1982; 47 FR 10266). We have stated that, when a firm must export to be eligible for benefits under a subsidy program and when the amount of the benefit received is tied directly or indirectly to

the firm's level of exports, that program is an export subsidy. The fact that the firm as a whole must be profitable to benefit from this program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenue instead of total revenue.

Comment 3: Consider argues that since CACEX Preferential Working Capital Financing for Exports and the Income Tax Exemption for Export Earnings (the two programs found to be used during the current review period) have been terminated, there is sufficient grounds to warrant a changed circumstances review under 19 CFR 355.22(h).

Department's Position: A changed circumstances review under 19 CFR 355.22(h) would have no purpose. As a result of the findings in this review and the termination of these programs, the rate of cash deposit will be zero. The termination of the two programs found to be countervailable in this review does not constitute changed circumstances sufficient to warrant revocation under 19 CFR 355.25(d). Revocation based on the government's elimination of all subsidies on the merchandise is provided for under 19 CFR 355.25(a)(1). Under that section, an order can be revoked only after the government has eliminated all subsidies for a period of at least three consecutive years; the Government of Brazil has not yet met this requirement.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.24 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12651 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 12, 1991, and Thursday, June 13, 1991, from 8:30 a.m. and 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. A closed session of the meeting will be held to discuss NIST out-year computer security budget matters. The closed session is scheduled to be held on Wednesday, June 12, 1991, from 1 p.m. to 5 p.m. All other sessions will be open to the public.

DATES: The meeting will be held on June 12, and 13, 1991, from 8:30 a.m. to 5 p.m. A closed session will be held on Wednesday, June 12, 1991, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, VA 22090. The specific conference room assignment will be posted on the days of the meeting at the facility. Inquiries regarding the Board meeting should not be directed to the conference facility.

Agenda

1. Welcome
2. Review of Federal Information Policies
3. Discussion of NIST's Long Range Plans
4. Discussion of proposed Information Security Foundation
5. Pending Board Issues
6. Public Participation
7. Wrap-up

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards & Technology, Gaithersburg, MD 20899. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 15, 1989, that the portion of this meeting which involves examination of out-year computer security budgets may be closed pursuant to Section 10 (d) of the Federal Advisory Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, P.L. 94-409. Those portions of the meeting, which involve discussion of future budget requests, may be closed to the public in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since those portions of the meeting are likely to divulge matters that may significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public.

Dated: May 22, 1991.

John W. Lyons,

Director.

[FR Doc. 91-12645 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Permit; Jenkinson Seauarium Corporation (P486).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing

the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Jenkinson Sequarium Corporation, 3 Broadway, Point Pleasant Beach, NJ 08742.

2. Type of Permit Requested: Public Display.

3. Number and Name of Marine Mammals: Four Atlantic harbor seals (*Phoca vitulina*).

4. The applicant requests permission to maintain four Atlantic harbor seals. The animals will be obtained from captive or stranded stock in the possession of other NMFS approved institutions or of the Northeast Regional Stranding Network. The education program associated with the seal-display tank will have a conservation theme.

The arrangements and facilities for transporting and maintaining the marine mammals requested in this application will be concluded consistent with requirements established by the US Department of Agriculture under the Animal Welfare Act. The animals will be under the care of a licensed veterinarian at Jenkinson Sequarium.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910, (301) 427–2289; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281–9300.

May 22, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–12556 Filed 5–28–91; 8:45 am]

BILLING CODE 3510–22–M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. (app. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 14, 1991, at 1 p.m. at 84 Beacon Street, Hampshire House Library, Boston, Massachusetts 02108.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Public Law 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order.
II. Approval of Minutes.
III. Introduction of Harvard Study.
IV. Review of current legislative issues.
V. Free Trade—Canada and Mexico.
VI. U.S./Canadian Open CIVAIR Negotiations: Open Skies.
VII. International Marketing Initiatives.
VIII. USTTA Fee Update.
IX. Miscellaneous.
X. Adjournment.

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

John G. Keller, Jr.,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 91–12652 Filed 5–28–91; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic; Correction

May 22, 1991.

In the letter to the Commissioner of Customs published in the Federal Register on May 15, 1991 (56 FR 22402), correct the import restraint levels for Categories 342/642 and 644 as follows:

Category	Twelve-month restraint limit
342/642	388,271 dozen.
644	402,563 numbers.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–12607 Filed 5–28–91; 8:45 am]

BILLING CODE 3510–DR–F

Clarification of Visa and Quota Requirements for Handloomed Fabrics Produced or Manufactured in Thailand

May 21, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting handloomed fabrics from visa and quota requirements.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The purpose of this notice is to clarify that, pursuant to exchange of notes dated September 7 and 16, 1982 between the Governments of the United States

and Thailand, handloomed fabrics, produced or manufactured in Thailand and exported to the United States from Thailand are exempt from visa and quota requirements if properly certified.

See Federal Register notices 42 FR 5994, published on February 1, 1977; and 47 FR 46732, published on October 20, 1982.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 21, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 26, 1977 and October 14, 1982 by the Chairman, Committee for the Implementation of Textile Agreements. Those directives establish export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in Thailand.

Effective on May 29, 1991, the January 26, 1977 and October 14, 1982 directives shall be amended to reflect that handloomed fabrics, produced or manufactured in Thailand shall be exempt from visa and quota requirements. You are directed to permit entry of shipments of handloomed fabrics if accompanied by an appropriate exempt certification issued by the Government of Thailand, regardless of the date of export.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Facsimile of Government of Thailand Certification for Exempt Textile Products Exported to the United States

Department of Foreign Trade
Ministry of Commerce
Thailand

Certificate No.

EXEMPTED ITEMS

Description

Certified on

Facsimile of Government of Thailand Certification for Exempt Textile Products Exported to the United States—Continued

Authorized Signature

Title

[FR Doc. 91-12483 Filed 5-28-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board: Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held Thursday and Friday, June 27 and 28, 1991 from 9 a.m. to 5 p.m. at the Software Engineering Institute, 5000 Forbes Avenue, Pittsburgh, PA 15213.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland, 20706, (703) 685-1477.

Dated: May 22, 1991.

L.M. Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 91-12590 Filed 5-28-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 24 July 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12583 Filed 5-28-91; 8:45 am]
BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 27 June 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquistion, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with

industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–12589 Filed 5–28–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Weapon Development and Production Technology will meet in open session on 20 and 21 June 1991 at Fort McNair, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive briefings on manufacturing processes related to improving weapon development strategies.

For further information contact Mr. Charles Kimzey at (703) 695–7580.

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–12591 Filed 5–28–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Meeting: Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces the sixth meeting of the Department of Defense Clothing and Textiles (DoD C&T) Board.

DATE: June 12, 1991.

ADDRESS AND TIME: Defense Logistics Agency, Cameron Station, room 3A260, Alexandria, Virginia, 1000–1600.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine James; Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274–7141.

SUPPLEMENTARY INFORMATION: Agenda for the meeting will focus on improvements to DoD acquisition of clothing and textile products. DoD C&T Board members are encouraged to attend. Staff officers and the general public should request further information prior to scheduling attendance.

M. J. Schildwachter,

Executive Secretary DoD C&T Board.

[FR Doc. 91–12658 Filed 5–28–91; 8:45 am]

BILLING CODE 3820–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 87–21]

OMB Clearance Request for Architect-Engineer and Related Services Questionnaire for Specific Project, Standard Form 255

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submited to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire for Specific Project, SF 255.

ADDRESSES: Sent comments to Ms. Maya Bernstein, FAR Desk Officer, Attention: Docket Library, room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

This form is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project. Hence the need for information regarding the number and discipline of consultant personnel. The degree to which an A–E firm will utilize consultants can significantly impact on their suitability and qualifications for a specific project. The revision to the form requesting A–E firms provide the name and phone number of a point of contact, usually the project manager, will (1) reduce the time required by the Government to verify performance on current Federal contracts, and (2) reduce the time lost by the A–E firms providing this information at a later date. The information is used to determine if a firm is qualified to perform a specific project.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 5,000; *responses per respondent,* 4; *total annual responses,* 20,000; *preparation hours per response,* 1.2; *and total response burden hours,* 24,000.

Obtaining Copies of Proposals: Requester may obtain copies from General Servies Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project, SF 255.

Dated: May 17, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–12549 Filed 5–28–91; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Cooperative Agreement Award Center for Applied Research

AGENCY: U.S. Department of Energy.

ACTION: Notice of acceptance of an unsolicited application for award of a financial assistance instrument.

SUMMARY: The Department of Energy (DOE), through the Denver Support Office gives notice of its plans to award a cooperative agreement to the Center for Applied Research, Denver, Colorado, for an integrated resource planning initiative for the Rocky Mountain Region. This unsolicited proposal was submitted by the Center under its own initiative in January 1991, and is accepted for support pursuant to the provisions of 10 CFR 600.14. The cooperative agreement will encourage and assist utilities, public utility commissions, state energy offices, and consumer groups to design and implement programs and policies that promote integrated resource planning (IRP). This agreement will stimulate the development of a regional data base, establishment of a Working Group and strategic plan, and the development of a new regional organization to support IRP.

The determination to make this award is based on the following information:

A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d) and (e). It was determined that the proposed project was meritorious and that the probability of achieving the anticipated objectives was extremely high. The facilities and capabilities that will be made available are appropriate, and the qualifications of the key personnel are exceptional.

The proposal represents an innovative approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and as determined by DOE, a competitive solicitation would be inappropriate.

The estimated cost of the project for the first year of the three year project is expected to be $150,000.

FOR FURTHER INFORMATION CONTACT: Margaret Learmouth, Denver Support Office, U.S. Department of Energy, 1075 South Yukon St., Lakewood, Colorado 80226. (303) 969-7000.

Issued in Chicago, Illinois on May 10, 1991.

Edwin H. Hendricks,

Deputy Assistant Manager for Administration.

[FR Doc. 91-12631 Filed 5-28-91; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-407-000, et al.]

Florida Power & Light Co, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 21, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER91-407-000]

Take notice that Florida Power & Light Company (FPL) on April 29, 1991, tendered for filing the system average distribution loss percentage determination effective May 1, 1991 for use in connection with Docket No. ER86-363, section D.4 of Attachment D to the Amended Agreement to Provide Specified Transmission Service between FLP and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 78).

FPL requests an effective date of May 1, 1991, and therefore requests waiver of the Commission's notice requirements

FPL states that Seminole has been served with a copy of this filing.

Comment date: June 3, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Cogen Technologies Baltimore, Inc.

[Docket No. QF91-123-000]

On May 14, 1991, Cogan Technologies Baltimore, Inc. tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership of the proposed cogeneration facility, and the thermal usage of its steam hosts.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

3. Cental Corporation

[Docket No. ES91-28-000]

Take notice that on May 10, 1991, Cental Corporation ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act for authority to issue not more than $750 million of short-term indebtedness on or before December 31, 1992 with a final maturity date no later than December 31, 1993.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12581 Filed 5-28-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91-151-000, RP91-37-001, RP91-37-004, and RP91-151-001]

Carnegie Natural Gas Co; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that on May 15, 1991, Carnegie Natural Gas Company (Carnegie) tendered for filing certain registered tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.[1]

Carnegie requests waiver of the 30-day notice period to allow the rates to become effective on June 1, 1991.

Carnegie states that these tariff sheets are being filed in compliance with the Commission's order issued on December 28, 1990, in Docket No. RP91-37-000, in which the Commission denied Carnegie authorization to continue to track standby charges incurred from Texas Eastern Transmission Corporation (Texas Eastern). Carnegie states that the referenced tariff sheets are substantially identical to the tariff sheets originally filed by Carnegie on November 30, 1990 in Docket No. RP91-37-000, except that the rate summary shown on Alt Thirteenth Revised Tariff Sheet Nos. 8 and 9, Second Revised Volume No. 1, reflects the removal of the standby charge tracker and the inclusion of the related Account No. 858 costs in Carnegie's base sales rates. In addition,

[1] The filing was initially made on April 30, 1991 in Docket No. RP91-37-001 and supplemented on May 3, 1991 in Docket No. RP91-37-004. The filing dates have been changed to May 15, 1991 due to the filings being re-docketed as a general rate filing under Section 4 of the Natural Gas Act in Docket Nos. RP91-151-000 and RP91-151-001. This notice will replace the previous notice of May 3, 1991, (56 FR 21482, May 9, 1991) and any person who filed to intervene or protest in response to the May 3 notice will not be required to do so again.

Carnegie states that First Revised Sheet no. 124, Second Revised Volume No. 1, reflects the removal of the pertinent tariff language from Carnegie's Purchased Gas Adjustment (PGA) clause in the General Terms and Conditions of its FERC Gas Tariff.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person who filed to intervene or protest in response to the May 3, 1991 notice will not be required to do so again. Any other person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must filed a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12585 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-67-005]

Granite State Gas Transmission, Inc. Proposed Changes in Rates and Tariff Provisions

May 21, 1991.

Take notice that on May 14, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed the tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates and tariff provisons:

2nd Sub. 6th Rev. Sheet No. 21
Sub. 1st Rev. Sheet No. 22
Sub. 2nd Rev. Sheet No. 24
Sub. 2nd Rev. Sheet No. 139
Sub. 2nd Rev. Sheet No. 140
Sub. 2nd Rev. Sheet No. 141
Sub. 1st Rev. Sheet No. 143
Sub. 1st Rev. Sheet No. 144

Granite State proposes an effective date of May 1, 1991 for the above listed tariff sheets.

According to Granite State, its filing is submitted to track the passthrough to its customers for take-or-pay buydown costs charged Granite State by Tennessee Gas Pipeline Company (Tennessee). It is stated that the Commission rejected Granite State's previous April 11 and 19, 1991 filing in this proceeding which tracked an underlying filing by Tennessee in Docket No. RP91-21 that the Commission rejected. Granite State also notes that the Commission required Granite State to clarify that its April 11 and 19, 1991 filing complied with Order No. 528-A with respect to the effective date of its reallocation of costs to small customers.

Granite State further states that on May 2, 1991, Tennessee filed revised tariff sheets in compliance with the Commission's order of April 26, 1991, in Docket No. RP91-21. According to Granite State, its resubmitted tariff sheets reflect the changes in Tennessee's allocation of take-or-pay costs to Granite State in the compliance filing, and also complies with the requirements of that Granite State clarify the effective date of its reallocation of costs to small customers pursuant to Order No. 528-A.

Granite State also requests that the filing fee of $1,880 previously paid in its filing of April 11 and 19, 1991 be applied to the resubmitted filing. Granite State bases its request for application of the previously paid filing fee to the resubmitted filing on the fact that the April 11 and 19, 1991 filing was rejected due to the rejection of the underlying Tennessee filing, and not through any fault of Granite State. Moreover, Granite State submits that the previous filing of April 11 and 19, 1991 did comply with the requirements of Order No. 528-A in terms of the effective date of the reallocation of costs to small customers, as clarified in the resubmitted filing.

According to Granite State the proposed rate changes and tariff provisions are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commision's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12586 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91-8-000]

Jack J. Grynberg, Individually and as General Partner For The Greater River Basin Drilling Program: 72-73 v. Rocky Mountain Natural Gas Company, a Division of KN Energy, Inc.; Notice of Complaint

May 21, 1991.

On May 8, 1991, Jack J. Grynberg, individually and as General Partner for the Greater Green River Basin Drilling Program: 72-73 (Grynberg) filed, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) rules of practice and procedure, a complaint protesting the claim for refunds by Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain). Grynberg requests the Commission to: (1) Require Rocky Mountain for the period commencing October 1, 1988 to cease and desist from engaging in unauthorized billing adjustments; and (2) order that Grynberg is entitled to collect the NGPA sections 104 (replacement and post-1974 contract vintages) 103, and 105 maximum lawful price's (MLP) for various gas production sold pursuant to a July 14, 1975 intrastate gas purchase contract between Grynberg and Rocky Mountain (1975 Agreement) and a May 9, 1984 Stipulation for Settlement and Dismissal (1984 Settlement Agreement) in which Rocky Mountain agreed, as partial consideration, to pay a price which is the equivalent of the NGPA section 102 MLP for all production under the 1975 Agreement commencing April 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 or 214 of the Commission's rules of practice and procedure. All such petitions should be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Respondent's answer to the complaint is also due on or before 30 days following Federal Register publication.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12584 Filed 5–28–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–499–001]

Niagara Mohawk Power Corp.; Filing

May 22, 1991.

Take notice that on April 29, 1991, Niagara Mohawk Power Corporation (Niagara) tendered for filing revised rate sheets for transmission services provided to Green Mountain Power Corporation, which were inadvertently excluded from the January 24, 1991 filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12850 Filed 5–28–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–259–048]

Northern Natural Gas Co.; Proposed Changes in F.E.R.C. Gas Tariff

May 21, 1991.

Take notice that Northern Natural Gas Company (Northern) on May 14, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, the following Tariff sheets:

Third Revised Volume No. 1

First Revised Sheet No. 74L
First Revised Sheet No. 74N

Original Volume No. 2

First Revised Sheet No. 1X
First Revised Sheet No. 1Z

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order Granting Rehearing, dated April 10, 1991, in this preceeding. An effective date of June 1, 1991 has been requested for this filing

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing shold file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12582 Filed 5–28–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–62–013]

Pacific Gas Transmission Company; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that Pacific Gas Transmission Company, (Pacific Gas) on May 17, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1–A.

Pacific Gas states that the proposed changes are in compliance with a FERC order of April 2, 1991 in the above-mentioned dockets to allocate capacity at Malin, Oregon above the 1,066 MMcf/d MDD of PL–1 service. The allocation scheme is to be a bidding mechanism that ranks bids first, according to the value of the bid, and second, pro rata among shippers submitting the highest value bids.

Pacific states that copies of the filing were served upon all parties in Docket Nos. RP87–62–101, and RP86–148–007.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12587 Filed 5–28–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–179–009]

Western Gas Interstate Co.; Compliance Filing

May 21, 1991.

Take notice that Western Gas Interstate Company ("Western") on May 17, 1991, pursuant to the Commission's Order issued on April 17, 1991, in this proceeding at 55 FERC Para. 61,088, tendered for filing certain tariff sheets to Second Revised Volume No. 1. Those tariff sheets reflect changes specifically required by the Order or which were necessary in order for the terms of Western's tariff to conform with the Order.

In addition, Western moved to place the foregoing tariff sheets into effect on June 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12583 Filed 5–28–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $105,000.00, plus accrued interest, in alleged refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with John R. Adams (Adams), Case No. LEF–0020. The OHA has determined that the funds will be distributed to customers which purchased regulated refined petroleum products from Adams during the period December 1, 1973 through May 31, 1975.

DATES AND ADDRESS: Applications for Refund from the Adams settlement fund must be filed in duplicate, addressed to "Adams Special Refund Proceeding, Case No. LEF–0020," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applications for Refund from the Adams settlement fund must be postmarked by May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $105,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with John R. Adams (Adams), formerly doing business as J.R. Adams Oil Company, on February 28, 1990. The funds were paid by Adams towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has determined that it will distribute the Adams settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Adams who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in section V of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of regulated refined petroleum products which they purchased from Adams during the December 1, 1973 through May 31, 1975, refund period. As indicated in the Decision, Adams provided the OHA with records listing its customers' purchases of Adams petroleum products during the refund period, and the OHA has attempted to forward this purchase information to Adams' customers. Applicants may rely on this purchase information in completing their Applications for Refund. In the Decision, we also listed those Adams customers who are prohibited from receiving Adams refund monies due to their possible participation in the alleged violations underlying Adams' compromise settlement.

Any settlement funds remaining after valid claims are paid in the first stage will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Purchasers of regulated petroleum products from Adams during the December 1, 1973 through May 31, 1975, refund period may now file Applications for Refund from the Adams settlement fund. These Applications for Refund must be postmarked by May 29, 1992. Instructions for the completion of Applications for Refund are set forth in section V of the Decision that immediately follows this notice. Applications for Refund should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Dated: May 21, 1991.

Name of Firm: John R. Adams.
Date of Filing: July 18, 1990.
Case Number: LEF–0020.

On July 18, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which John R. Adams, formerly doing business as J.R. Adams Oil Company, remitted to the DOE.[1] Adams has remitted $105,000 pursuant to a compromise settlement, to which $44,421.37 in interest has accrued as of April 30, 1991. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requests that the OHA establish special refund procedures to remedy the effects of Adams' alleged regulatory violations.

I. Background

Adams sold a range of refined petroleum products in the midwestern and southwestern regions of the United States. These sales were covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et. seq.* Adams was a "reseller-retailer" subject to the price regulations set forth at 10 CFR part 212, subpart E, between August 19, 1973 and January 27, 1981.

During the period of petroleum price controls, the ERA conducted an audit of Adams' operations to determine its compliance with the DOE regulations. The ERA's audit of Adams covered the company's sales during the period between December 1973 and May 31, 1975. As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) in 1984 alleging that Adams had not complied with the refiner price regulations in its refined product sales.[2]

On October 21, 1985, Adams entered into a consent order with the DOE resolving issues of its alleged violation of the DOE regulations between December 1973 and January 1981 (the consent order period). Without admitting any violations of these regulations, Adams agreed to remit monies to the DOE under the provisions of the consent order. On February 20, 1990, the DOE obtained a consent judgment from the U.S. District Court for the Western District of Oklahoma

[1] All references herein to "Adams" include both John R. Adams individually and J.R. Adams Oil Company.

[2] In December 1979, John R. Adams pled guilty to an Information filed in the U.S. District Court for the Western District of Oklahoma relating to his criminal violation of the petroleum price regulations in twenty specific 1974 transactions. As a result, Mr. Adams was fined $100,000.

enforcing the 1985 consent order. On February 28, 1990, the DOE received a compromise settlement from Adams resolving issues of Adams' adherence to the 1985 consent order and the 1990 consent judgment.

Since $44,421.37 in interest has accrued, as of April 30, 1991, on the $105,000.00 remitted under the compromise settlement, a total of $149,421.37 is available for disbursement pursuant to the compromise settlement. These funds are held in an interest-bearing escrow account at the Department of the Treasury awaiting a determination of their proper disposition.

II. Jurisdiction and Authority

The regulations codified in subpart V establish general guidelines which the OHA utilizes in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of subpart V and the authority of the OHA to design refund procedures may be found in Office of Enforcement, 9 DOE ¶ 82,508 (1981) and in Office of Enforcement, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition for the implementation of refund procedures under the subpart V mechanism with respect to the Adams settlement monies and have determined that such refund procedures are appropriate. This Decision and Order establishes the OHA's plan to distribute these funds.

III. Proposed Decision and Order

On February 27, 1991, the DOE issued a Proposed Decision and Order establishing tentative refund procedures for the distribution of the Adams settlement fund. Although this Proposed Decision and Order was published in the **Federal Register** and a 30-day period was provided for the submission of comments regarding our proposed refund plan, no interested parties filed comments with regard to the Proposed Decision. We will adopt the refund procedures of the Proposed Decision and Order, set forth below, in final form.

IV. Refund Mechanism and Refund Period

The 1985 consent order and subsequent court actions between the DOE and Adams settled issues of Adams' alleged violation of regulations governing the pricing of refined petroleum prducts. These issues were based upon a 1984 PRO alleging that Adams did not properly calculate its refined product selling prices under the refiner price rule. Since no information in the enforcement record indicates that Adams participated in the refining, processing, or reselling of crude oil and Adams' alleged violations were solely attributable to refined product operations, all of the Adams settlement funds will be made available for distribution to persons who purchased Adams refined petroleum products.

Applications in this refund proceeding must be based solely on purchases of covered Adams petroleum products made between December 1, 1973 and May 31, 1975 (the "refund period"). This refund period represents the period of Adams' operations audited by the ERA and during which Adams' alleged regulatory violations occurred. Even though the 1985 consent order covered a duration longer than the refund period, we believe that the refund period should reflect the isolated pattern of Adams' alleged violations. Accord Cloyce K. Box, 15 DOE ¶ 85,001 (1986) (*Box*) (refund period restricted to the 4½ months during which the alleged violations transpired).[3]

V. Refund Procedures

We will implement a two-stage refund procedure for the Adams settlement funds. Purchasers of refined petroleum products from Adams during the refund period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be disbursed to the state governments for indirect restitution. Our experience with subpart V refund proceedings indicates that potential claimants will consist of: (1) End-users, (2) regulated entities, such as public utilities, and cooperatives, and (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

The only purchasers of Adams petroleum products during the refund period which are ineligible for refunds are those parties identified in the enforcement record as having participated with Adams in its alleged violations.[4] Since the Adams settlement monies are intended for those injured by Adams' alleged overcharges, we do not believe that it would be appropriate to compensate parties who may have themselves participated in and benefitted from the alleged overcharges covered by the Adams settlement. *See* Box at 88,002. Additionally, the stricture against "unclean hands" in the equitable subpart V refund proceedings prevents the parties described above from receiving Adams settlement funds. *Id.*

A. Claims Based on Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Adams during the December 1, 1973 through May 31, 1975, refund period. If the petroleum products were not purchased directly from Adams, the claimant must establish that they originated with Adams. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Adams' alleged overcharges. The two distinct elements generally required in such an injury showing are: (1) The existence of "banks" of unrecovered increased product costs by a reseller claimant in excess of the refund sought,[5] and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges. See *Vickers Energy Corp./Hutchens Oil Co., Inc.* 11 DOE ¶ 85,070 at ¶ 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Adams. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *affirmed sub nom. Atlantic Richfield Co.* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. Use of Presumptions

The use of certain presumptions permits claimants to participate in refund proceedings without incurring

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[3] Cloyce K. Box was a business associate of John R. Adams, and the alleged violations underlying the *Box* special refund proceeding were substantially the same as those underlying this Decision.

[4] The companies and individuals purportedly linked to Adams' alleged violations and, thereby, prohibited from receiving Adams refund monies are as follows:

CLB Enterprises, Inc.—Dan Baxter
Consolidated Materials, Inc.—Boyce Box
OKC Corporation—Cloyce K. Box
OKC Trading Company—Carl Lavery
Quality Oil—Jean Parker
Stonewalk Corporation—Phil Parker

[5] Claimants which have previously obtained refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting tho show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum products) or for any prior month. See Standard Oil Co. (Indiana)/Suburban Propane Gas Corp., 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. See Gulf Oil Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986).

burdensome expenses, and aids in the efficient evaluation of refund clams. See, e.g., *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent Subpart V regulations at 10 CFR 205.282(e). We will adopt the presumptions described below.

a. Calculation of Refunds. We will adopt a presumption that the alleged overcharges were dispersed equally in all of Adams' sales of regulated (covered) refined petroleum products during the refund period and, thereby, refunds will be made on a per gallon, or "volumetric," basis.[6]

In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company–wide basis in establishing its prices.

Under this volumetric method, a claimant's "allocable share" of the settlement fund is equal to the number of gallons of covered petroleum products which it purchased from Adams during the refund period multiplied by the per gallon (volumetric) refund amount.[7] In the present refund proceeding, we have computed the per gallon refund amount to be $0.00093.[8] Using this volumetric amount, a claimant would be eligible for a refund of $930 per one million gallons purchased. In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Adams settlement fund since the time of its deposit in the appropriate escrow account.[9]

We will also adopt various presumptions concerning a claimant's injury, which are listed below.

b. End-Users. In accordance with prior subpart V refund proceedings, we will adopt the presumption that end-users of Adams petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Adams' alleged overcharges. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum prices regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. See TOGCO at 88,209. Accordingly, end-users will only be required to establish their purchase volumes of covered Adams petroleum products during the refund period to make sufficient showings that they were injured by the alleged overcharges.

c. Regulated Bodies and Cooperatives. A claimant whose prices for goods and sevices are regulated by a governmental body (e.g. public utilities), or an agricultural cooperative, will only need to submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certify that it will: (1) Pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. See Exxon at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass through any refunds resulting from the alleged overcharges to its customers and member-customers, respectively. Accordingly, these firms will not be required to make detailed demonstrations of injury to receive refunds.[10]

d. Retailers, Resellers, and Refiners.

i. Small Claims Presumption. We will adopt a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Adams petroleum products and possesses an allocable share of the settlement fund of $5,000 or less, exclusive of interest, was injured by the alleged overcharges. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Adams petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the large number of routine refund claims expected.[11]

ii. Mid-Level Claims Presumption. Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Adams settlement fund exceeds $5,000, exclusive of interest, may elect to receive either $5,000 or 40 percent of its allocable share, whichever is greater, also exclusive of interest.[12] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Adams' alleged overcharges. See Total Petroleum, Inc., 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we determined product-specific levels of injury through detailed evaluations. See, e.g., Getty Oil Co., 15 DOE ¶ 85,064 (1986). However, in Gulf Oil Corp., 16 DOE ¶ 85,381 at 88,737

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[6] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Adams' alleged overcharges. See, e.g., Mobil Oil Corp./The Atchison, Topeka and Santa Fe Railway Co., 20 DOE ¶ 85,788 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant shows that is was "overcharged" by a specific amount and absorbed those overcharges. See Panhandle Esastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989).

[7] The petroleum products sold by Adams which were subject to the petroleum price regulations and their respective decontrol dates are as follows:

Liquid Asphalt—April 1, 1974
Residual Fuel Oil—June 1, 1976
No. 2 Fuel Oil—July 1, 1976
Jet Fuel—February 26, 1979
Motor Gasoline—January 28, 1981

[8] We obtained the per gallon refund figure by dividing the principal portion of the Adams settlement fund ($105,000.00) by the approximate volume of refined petroleum products sold by Adams between the beginning of the refund period (December 1, 1973) and the earlier of the end of the refund period (May 31, 1975) or the date of decontrol for each relevant product (113,000,000 gallons).

[9] As in prior cases, we will establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 16,129 gallons of petroleum products from Adams would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. See Exxon Corp., 17 DOE ¶ 85,590 at 89,150 (1988) (Exxon).

[10] A cooperative's purchases of Adams petroleum products which were subsequently resold to non-members will be treated as if they were purchases made by other resellers. See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc., 19 DOE ¶ 85,215 (1989).

[11] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 5,376,344 gallons of Adams petroleum products during the refund period.

[12] Under the mid-level injury presumption, a claimant which purchased between 5,376,344 gallons and 13,440,860 gallons of Adams petroleum products would be eligible to receive a principal (exclusive of interest) refund of $5,000. A claimant purchasing more than 13,440,860 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share.

(1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the *Gulf* determination is sound and, accordingly, we will adopt a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases in the present refund proceeding. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Adams petroleum products to be eligible for a refund of $5,000 or 40 percent of its allocable share, whichever is greater.[13]

iii. Spot Purchasers. We will adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Adams did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 85,396–97. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Adams.[14]

B. Allocation Claims

We may also receive claims based upon Adams' alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations. 10 C.F.R. Part 211. Any such applications will be evaluated with reference to the standards established in Subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as Mobil Oil Corp./Aromalene Oil Co., 20 DOE ¶ 85,155 (1990); Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate: (1) The existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 C.F.R. Part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustained as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Adams. See Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989), action for review pending, No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Adams. In determining the amount of any allocation refund, we will utilize any available information regarding the portion of the Adams settlement fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the consent order underlying the Adams fund was the result of a negotiated settlement of the issues identified in the enforcement action against Adams and the amount of the settlement fund is less than Adams' potential liability under that action, we will reduce allocation refunds which would otherwise be disproportionately large in relation to the settlement fund. See Amtel, Inc./Whitco, Inc., 19 DOE ¶ 85,319 at 88,596 (1989) (refund reduced by the ratio of the amount of the consent order fund to the aggregate amount of the consent order firm's alleged overcharges).

C. Refund Application Requirements

To apply for a refund from the Adams settlement fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, social security number or employer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the Adams petroleum products: e.g. retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) A statement indicating whether the applicant established the volume of covered petroleum products which it purchased from Adams by consulting its own records or by relying on the customer information provided by Adams.[15] If it consulted its own records, the applicant should follow the requirements of part (a) below; whereas if it relied on Adams, customer information,[16] the applicant should follow the requirements of part (b) below;

(a) For each petroleum product which the applicant purchased from Adams, a schedule showing, on a monthly basis, its purchases made between the beginning of the refund period (December 1, 1973) and the date of decontrol of the petroleum product or the end of the refund period (May 31, 1975), whichever is earlier. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation

[13] A claimant who attempts to make a detailed injury showing in order to obtain 100 percent of its allocable share but, rather, provides evidence leading us to conclude that it passed through all of the alleged overcharges, or that it was injured to a lesser degree than is presumed herein, will not receive a full refund under an injury presumption. Instead, such a claimant will receive a refund reflecting the level of injury established in its application.

[14] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss.

[15] In order to further the DOE's providing restitution to parties injured by actual or alleged oil overcharges, the DOE requested Adams' customer records from the refund period. Adams sent such records to the DOE, from which the DOE computed, on a product-by-product basis, the volume purchased by each Adams customer. If an applicant in this refund proceeding believes that Adams' customer records accurately reflect the volume of Adams petroleum products which it purchased during the refund period, it may rely on those purchase volumes in completing this section of its application. Even if an applicant relies of Adams' customer purchase figures, the DOE may reflect that the applicant provide documents verifying those figures. Furthermore, any applicant may elect not to rely on Adams' figures and, instead, substantiate its own purchase figures in the manner described in Section V.C.(3)(a).

[16] The DOE will send the following items to each Adams customer for whom an address is listed in Adams' records: (1) Adams' sales volume information corresponding to the customer; and (2) a copy of this Implementation Order.

methodology must be reasonable and must be explained in detail; or

(b) For each petroleum product which the applicant purchased from Adams, the total gallonage figure computed from Adams' record, for the entire refund period. The applicant should also submit a statement certifying that Adams, customer records accurately reflect the volume of Adams petroleum products which it purchased during the refund period;

(4) If the applicant was a direct purchaser from Adams, it should provide its customer number. If the applicant was an indirect purchaser from Adams (e.g. it purchased Adams petroleum products through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by Adams;

(5) If the applicant is a regulated utility or a cooperative certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $5,000 (i.e. whose purchases equal or exceed 5,376,344 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $5,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Adams' alleged overcharges. *See* Section V.A. *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Adams refund proceding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If Adams has or ever had any financial interest in the applicant, it should explain this interest (e.g. stock ownership, commonly owned assets, lending institution), including the years in which this interest existed.[17]

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g. sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

> I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

The application information may be submitted in a letter; there is no required nor suggested application format. All applications should be either typed or printed and clearly labeled "Adams Special Refund Proceeding, Case No. LEF-0020." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information on its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated, "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than May 29, 1992, and sent to:

Adams Special Refund Proceeding,
Office of Hearings and Appeals,
Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

D. Distribution of Funds Remaining After the First Stage

Any funds remaining in the Adams settlement fund after the payment of all valid first-stage claims will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to meet the claims of injured parties in Subpart V refund proceedings and make those funds available to state governments for use in four identified energy conservation programs. The Secretary has delegated these duties to the OHA, and any funds in the Adams fund that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by John R. Adams pursuant to the Consent Order executed on October 21, 1985, may now be filed.

(2) All Applications for Refunds from the John R. Adams settlement funds must be postmarked no later than May 29, 1992.

Dated: May 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-12632 Filed 5-28-91; 8:45 am]

BILLING CODE 6450-01-M

[17] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates or subsidiaries of Adams were not injured by Adams' alleged overcharges. See, e.g. Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is so because Adams presumably would not have sold petroleum products to an affiliate or subsidiary if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate or subsidiary of Adams was granted a refund, Adams would be indirectly compensated from a fund remitted to settle its own alleged violations.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3959-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it

includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Secondary Brass and Bronze Production Plants (Subpart M). (ICR #1129.03; OMB #2060–0110). This is a reinstatement of a previously approved collection. On December 19, 1990, at 55 FR 52095, EPA mistakenly published a notice that this ICR would not be renewed.

Abstract: Owners or operators of brass and bronze production facilities must notify EPA of construction, reconstruction, modification, startup, shutdown, and malfunction of reverberatory and electric furnaces of 1,000 kg or greater production capacity, and blast furnaces of 250 kg/hr or greater production capacity. Owners or operators must record all data and calculations and results of initial performance tests and submit that data of EPA. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period in which the monitoring system is inoperative. Recurring compliance reports are not required under this standard. EPA uses the data to determine the ability of each plant to comply with the emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to be 42 hours per response, and 1.5 hours for recordkeeping annually.

Respondents: Owners and operators of secondary brass and bronze production plants.

Estimated No. of Respondents: 2 for reporting and 18 for recordkeeping.

Estimated No. of Respondents per Respondent: 1.

Estimated Total Annual Burden on Respondents: 111 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 22, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–12628 Filed 5–28–91; 8:45 am]

BILLING CODE 6560–50–M

Establishment of the Expert Panel on the Role of Science at EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of establishment of the Expert Panel on the role of science at EPA.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 9(c), EPA gives notice of the establishment of the Expert Panel on the Role of Science at EPA. EPA has determined that this action is in the public interest. The purpose of the Panel is to provide independent advice and counsel to the Administrator on how best to integrate current, objective scientific information into the process of EPA policy development and decision-making.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Special Assistant to the Administrator (A–101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382–4724.

SUPPLEMENTARY INFORMATION: The text of the Charter for the Panel follows:

Expert Panel on the Role of Science at EPA

1. Purpose and Authority. This Charter establishes the Expert Panel on the Role of Science at EPA in accordance with requirements of the Federal Advisory Committee Act, 5 U.S.C. app. 9(c). The purpose of the Expert Panel is to provide independent advice and counsel to the Administrator on how best to integrate current, objective scientific information into the process of EPA policy development and program decision-making.

2. Scope of Activity. The activities of the panel will include analyzing problems, conducting reviews, holding meetings, providing reports, making recommendations, forming study groups, and other activities needed to meet the Panel's objectives.

3. Objectives. The Panel will provide expert advice to the Administrator on the role of science at EPA. The Panel will work with EPA offices to accomplish this task. The Panel will make recommendations to the Administrator on how to achieve the following objectives:

- To identify how best to provide the Administrator with up-to-date, objective scientific information in keeping with the Agency's new Strategic Direction;
- To assure proper planning and management;
- To ensure that the research and scientific information needs of the programs and regions are adequately met, and their views incorporated in the scientific advice provided to the Administrator; and
- To enhance the stature of science within the Agency and among the many constituencies with which EPA deals.

4. Composition. The Panel shall be composed of four members, including the chairperson. Members of the Panel will be selected on the basis of their professional qualifications to examine the role of science at EPA. To the extent feasible, the panel membership will represent a range of scientific disciplines relevant to environmental issues. Most members will be appointed as Special Government Employees, subject to the conflict-of-interest restrictions.

5. Meetings. The Panel will meet at the request of the Administrator or the Administrator's designee. A full-time employee of the Agency, who will serve as the Designated Federal Official, will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Designated Federal Official. The estimated annual operating cost of the Panel is $50,000, including 0.5 workyears of staff support. Support for the Panel's activities will be provided by the Office of the Administrator and the Office of Research and Development.

6. Duration. The Panel will terminate by February 29, 1992, unless the Deputy Administrator determines that the Panel will not finish its work within 30 days of the original termination date. If the Deputy Administrator makes such a determination, he can extend the termination date by 30 days without further consultation with GSA. In the event more time is needed, EPA may seek an extension under section 14 of FACA.

Copies of the charter will be filed with the appropriate committees of the Congress and the Library of Congress.

Dated: May 22, 1991.

F. Henry Habicht II,

Deputy Administrator.

[FR Doc. 91–12627 Filed 5–28–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP-42039E; FRL-3874-8]

Kansas State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to the Kansas State Plan.

SUMMARY: In the Federal Register of June 6, 1990, the Agency announced the intention to approve amendments to Kansas' Plan for Certification of Applicators of Pesticides Classified for Restricted Use. EPA hereby announces final approval of these amendments.

ADDRESSES: Copies of the Kansas State Plan and the amendments are available for review at the following locations:

1. Toxics and Pesticides Branch, U. S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
2. Plant Health Division, Kansas State Board of Agriculture, 109 SW., 9th St., Topeka, KS 66612.

FOR FURTHER INFORMATION CONTACT: Donald Bahnke (913–551–7020), or Dale Lambley (913–296–2263), Director, Plant Health Division, Kansas State Board of Agriculture, 109 SW., 9th St., Topeka, KS 66612.

SUPPLEMENTARY INFORMATION: The Kansas State Plan for Certifying Pesticide Applicators was formally approved by notice in the Federal Register of October 28, 1977 (42 FR 56786). The Kansas State Board of Agriculture requested approval of amendments to establish a pesticide dealer registration program, impose additional supervision and training requirements in specified areas, establish civil authority over commercial applicators and some private applicators, and the subdivision of some commercial categories into subcategories.

EPA received two comments on the June 6, 1990 Notice of Intent to Approve. The first comment was from the Kansas State Board of Agriculture. This comment identifies two errors. First, the Notice indicates records of general and restricted use pesticide sales must be maintained by pesticide dealers. This is incorrect as only records of restricted use pesticide sales are required to be maintained. Second, the Notice indicates that all pesticide dealers of both general and restricted use pesticides must register annually. This is basically correct; however, dealers of general use pesticides defined by the Kansas State Board of Agriculture as household pesticides are exempt from this registration requirement. Since this comment only identified technical errors in the Notice of Intent to Approve and not Plan deficiencies, no further action is required.

The second comment on the Plan was from the Baker Performance Chemicals, Inc. (BFC). The first part of the comment objected to the requirement that a certified applicator be physically present during an application performed by a nonregistered pest control technician. The Agency and the Kansas State Board of Agriculture believe that this provision provides additional protection, which outweighs the possible disruption to a business' normal operating procedures. Therefore, this provision is retained.

The second part of BFC's comment requested that the additional certification categories of non-agricultural herbicides and microbiocides be added to the Plan. This request was rejected because the existing categories/subcategories already include the uses in question. Further, the categories proposed by BFC are highly specialized and would be utilized by only a small group of pesticide applicators.

EPA hereby grants final approval of the amendments to the Kansas Plan for Certification of Applicators of Pesticides Classified for Restricted Use.

Dated: April 22, 1991.

Morris Kay,

Regional Administrator, Region VII.

[FR Doc. 91–12522 Filed 5–28–91; 8:45 a.m.]

BILLING CODE 6560–50–F

[OPP-42067; FRL-3840-5]

Shoshone-Bannock Tribes; Notice of Intent to Approve the Tribal Plans for the Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve Tribal Plan.

SUMMARY: The Fort Hall Business Council governing body of the Shoshone-Bannock Tribes has submitted to EPA through the Department of Interior a Plan for the certification of applicators of restricted use pesticides. Notice is given of the intention of the Regional Administrator, EPA Region 10, to approve this Plan. A summary of the Plan appears below. Interested persons are invited to comment.

DATES: Written comments must be submitted on or before June 28, 1991.

ADDRESSES: Address comments identified by the docket control number OPP–42067 to: Allan Welch, Pesticides and Toxic Substances Branch (AT–083), Air and Toxics Division, Region 10, U. S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Allan Welch (206–442–1980).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, U.S.C. 136(b) and 40 CFR part 171, the Fort Hall Business Council governing body of the Shoshone-Bannock Tribes has submitted a Tribal Plan for the certification of applicators of restricted use pesticides to EPA through the Department of Interior for approval.

I. Summary of Plan

The Fort Hall Council governing body has designated the Pesticide Control Officer, within the Shoshone-Bannock Tribes Land Use Department, as the responsible official for the administration of the pesticide applicator certification program.

Legal authority for the certification program is contained in the Shoshone-Bannock Tribal Pesticides Code. A copy of the Code is attached to the Plan.

The Plan lists the personnel available to carry out the certification program. Also, it lists the Idaho State Department of Agriculture and the Idaho Cooperative Extension Service as Cooperating Agencies. Funding to operate the certification plan will be provided by the Shoshone-Bannock Tribes and through Cooperative Agreement Awards from EPA.

The Shoshone-Bannock Tribes' Pesticide Control Officer will submit an annual report to EPA by October 30 of each year and other reports requested by the Administrator of EPA. The annual report will cover the period from October 1 through September 30.

The Shoshone-Bannock Tribes' Plan utilizes the Idaho State Certification program to determine applicator competence. An Idaho State pesticide license is a prerequisite to obtaining a tribal certification. Also, the Plan requires applicants to pass a written competency examination administered by the tribes on Tribal Law and Environmental Ethics. Once these conditions are met, an applicant, after paying the fee, can receive a Shoshone-Bannock Tribal applicator certification. The certification and licensing document will list the category(ies) and have the same expiration date that appears on the Idaho credential. It is estimated that 150 private applicators and 140

commercial applicators will require Shoshone-Bannock Tribes Certification.

The commercial applicator categories listed in the Plan are the same as those listed in the Idaho Plan. Shoshone-Bannock Tribes' categories are:

1. Agricultural Insecticide.
2. Agricultural Herbicide.
3. Agricultural Soil Fumigation.
4. Livestock Pest Control.
5. Ornamental Insecticide.
6. Ornamental Herbicide.
7. General Pest Control Operator (PCO).
8. Structural Destroying Pests.
9. Right-of-Way Herbicide.
10. Rodent Control.
11. Aquatic Weed Control.
12. Seed Treatment.
13. Commodity Fumigation.
14. Potato Cellar Pest Control.
15. Weed Preservative.
16. Mosquito Control.
17. Forest Environment.
18. General Vertebrate.
19. Dealer Manager.
20. Consultant.

The general standards of competency will be the same as those listed in 40 CFR 171.4(b) and 171.6. The specific standards of competency for each category or subcategory are the same as the standards listed in 40 CFR 171.4(c).

The certification period for private and commercial applicators will be every 3 years. Shoshone-Bannock Tribes may revoke the tribal certification of any individual whose Idaho certification is revoked.

The Tribes will coordinate certification activities with the Idaho State Department of Agriculture. Tribal applicator training needs will be coordinated with the Idaho Cooperative Extension Service.

II. Public Comments

Copies of the Plan, the Tribal Pesticides Code, and all written comments are available for review at the following locations during normal business hours.

1. Shoshone-Bannock Tribes Land Use Department, Fort Hall, Idaho 83203.
2. Pesticides and Toxic Substances Branch, Air and Toxics Division, Region 10, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 442-1980.
3. Field Operations Division (H7506C), Office of Pesticide Programs, rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 557-3262.

Interested persons are invited to submit written comments on the proposed Tribal Plan.

Dated: May 1, 1991.

Charles Findley,

Acting Regional Administrator, Region X.

[40 FR Doc. 91-12634 Filed 5-28-91; 8:45]

BILLING CODE 6560-50-F

[PF-547; FRL-3925-5]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) and the amendment of an FAP proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	1921 Jefferson Davis Hwy., Arlington, VA.
Susan Lewis (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and/or food/feed additive petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 0F3915.* Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.349 by establishing a regulation to permit combined residues of nemacur (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl)phosphoramidate in or on plums at 0.02 ppm, almonds at 0.3 ppm, almond hulls at 0.4 ppm, walnuts at 0.4 ppm, and pecans at 3.5 ppm. The analytical method used is gas chromatography with flame photometric detector. (PM 21)

2. *PP 1F3971.* E.R. Butts International, Inc., 555 Clinton Ave., P.O. Box 3337, Bridgeport, CT 06605-0337, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the biofungicide *Streptomyces griseoviridis* in or on seeds, cuttings, and plants. (PM 21)

3. *PP 1F3972.* Autochem North America, Inc., Agrichemicals Division, Three Parkway, Philadelphia, PA 19102, proposes to amend 40 CFR 180.110 by establishing a regulation to reduce residue levels of maneb in or on broccoli from 10 ppm to 7 ppm. The analytical method used is gas chromatography and high-photometric liquid chromatography. (PM 21)

4. *PP 1F3973.* Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 0887, proposes to amend 40 CFR 180.449 by establishing a regulation to permit combined residues of abamectin including its delta 8,9-isomer in or on lettuce at 0.05 ppm, and

almonds and walnuts at 0.005 ppm. The analytical method used is high-pressure liquid chromatography. (PM 15)

5. *FAP 0H5601.* Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 185.2950 by establishing a food additive regulation to permit combined residues of nemacur (ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl)phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl(1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl(1-methylethyl)phosphoramidate in or on prunes at 0.04 ppm. The analytical method used is gas chromatography with flame photometric detector. (PM 21)

6. *FAP 1H5611.* Merck Sharp & Dohme, Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, proposes to amend 40 CFR part 186 by establishing a feed additive regulation for combined residues of abamectin and its delta 8,9-isomer in or on almond hulls at 0.1 ppm. The analytical method used is high-pressure liquid chromatography. (PM 15)

Amended Petition

7. *FAP 0H5595.* Rhone-Poulenc Ag Co., P.O. Box 12014, Research Triangle Park, NC 27709, proposes to amend 40 CFR 185.2700 to establish a tolerance for the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in or on sugarcane molasses at 3.0 parts per million (ppm) and baagasse at 0.25 ppm in conjunction with an experimental use program. A previous notice of FAP 0H5595 proposing to amend 40 CFR 185.2700 by establishing a tolerance of 1.5 ppm on sugarcane molasses appeared in the **Federal Register** of May 9, 1990 (55 FR 19320).

Authority: 7 U.S.C. 136a.

Dated: May 14, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12829; Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30319; FRL 3892-6]

Stine Microbial Products; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 28, 1991.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30319] and the registration/file number to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Attention PM 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 246, Attention PM 21, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 21, Susan Lewis, rm. 227, CM #2, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 63950-R. Applicant: Stine Microbial Products, 4722 Pflaum Road, Madison, WI 53704. Product name: Blue Circle. Fungicide. Active ingredient: *Pseudomonas cepacia* type Wisconsin at 3.8 percent. Proposed classification/Use: General. To be used on various crops as a seed treatment. (PM 21)

2. File Symbol: 63950-E. Applicant: Stine Microbial Products. Product name: SMP PcpWi. Fungicide. Active ingredient: *Pseudomonas cepacia* type Wisconsin at 3.8 percent. Proposed classification/Use: General. For manufacturing use. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: May 10, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12293 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30312; FRL 3875-6]

Vinclozolin; Receipt of Request to Amend Registration to Delete Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: This notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a request from the BASF Corporation to amend the registration of their vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, pesticide products to delete all plum and prune use. The products are marketed under the tradenames Ronilan WP Fungicide (EPA Registration No. 7969-53), Ronilan FL Fungicide (EPA Registration No. 7969-62), and Ronilan DF Fungicide (EPA Registration No. 7969-85). EPA expects to approve these requests thereby amending affected registrations of BASF products containing vinclozolin.

DATES: Modifications of registrations shall be effective August 27, 1991 and all future distribution, sale, or use of affected vinclozolin products shall be in accordance with the terms and conditions described herein.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-557-1900.

SUPPLEMENTARY INFORMATION: On October 29, 1990, BASF Corporation , PO Box 13258, Research Triangle Park, NC 27709-3528 submitted applications to amend registration of Ronilan WP Fungicide (EPA Registration No. 7969-53), Ronilan FL Fungicide (EPA Registration No. 7969-62), and Ronilan DF Fungicide (EPA Registration No. 7969-85) to delete the plum and prune use.

EPA has reviewed the existing stocks and relabeling elements of the registrant's request and has concluded that all existing stocks under the control of BASF Corporation must be labeled within in 1 month of EPA's approval of the request for use deletion and all new product as produced must bear approved labels reflecting the use restriction.

EPA has received and expects to approve the request described above effective August 27, 1991, incorporating the requested actions and the existing stocks provisions as described above.

Authority: 7 U.S.C. 136.

Dated: May 20, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12633 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180845; FRL 3887-2]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the six States as listed below. Four crisis exemptions were initiated by various States, including one by the United States Department of Agriculture. Also granted were two quarantine exemptions to the United States Department of Agriculture/APHIS. These exemptions were issued in February, except for one issued in January. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of avermectin B_1 on strawberries to control two-spotted spider mites; February 14, 1991, to February 13, 1992. (Jim Tompkins)

2. Iowa Department of Agriculture and Land Stewardship for the use of Pro-Gro (30% carboxin/50% thiram) on onions seeds to control onion smut; February 15, 1991, to May 31, 1991. (Susan Stanton)

3. Minnesota Department of Agriculture for the use of Pro-Gro (30% carboxin/50% thiram) on onion seed to control onion smut; February 15, 1991, to May 31, 1991. (Susan Stanton)

4. Oregon Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control hop downy mildew; February 11, 1991, to September 15, 1991. (Susan Stanton)

5. Washington Department of Agriculture for the use of fosetyl-aluminum (Aliette) on head and leaf lettuce to control downy mildew; February 11, 1991, to October 31, 1991. (Susan Stanton)

6. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of Pro-Gro (30% carboxin/50% thiram) on onion seed to control onion smut; February 15, 1991, to May 31, 1991. (Susan Stanton)

Crisis exemptions were initiated by the:

1. Louisiana Department of Agriculture on February 15, 1991, for the use of triadimefon on strawberries to control powdery mildew. This program has ended. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry on February 22, 1991, for the use of pendimethalin on sugarcane to control itchgrass and browntop panicum. The need for this program is expected last until June 30, 1991. (Jim Tompkins)

3. Texas Department of Agriculture on February 18, 1991, for the use of iprodione on cabbage to control alternaria brassicae. Since it was anticipated that this program would be needed for more than 15 days, Texas is expected to request a specific exemption to continue it. (Libby Pemberton)

4. United States Department of Agriculture on January 24, 1991, for the use of methyl bromide on durian to control mealybugs. This program has ended. (Libby Pemberton)

EPA has granted quarantine exemptions to the:

1. United States Department of Agriculture/APHIS for the use of diquat dibromide on citrus trees to control citrus canker; February 5, 1991, to February 4, 1994. (Jim Tompkins)

2. United States Department of Agriculture/APHIS for the use of Quaternary Ammonium Compounds on field equipment, clothing, shoes, trucks, vans, tires, and other exposed surfaces to control citrus canker; February 5, 1991, to February 4, 1994. USDA had initiated a crisis exemption for this use. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: May 10, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-12635 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-44570; FRL 3927-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,1,1-trichloroethane (CAS No. 71-55-6), and C.I. disperse blue 79:1 (CAS No. 3618-72-2) submitted pursuant to consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 1,1,1-trichloroethane were submitted by the Halogenated Solvents Industry Alliance pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on March 12, 1991. The submission describes the validation with scopolamine and methscopolamine of a test of short-term memory in rats. Health effects testing is required by this consent order. This chemical is used as a cleaning stabilizer.

Test data for C.I disperse blue 79:1 were submitted by the U.S. Operating Committee of ETAD on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on May 3, 1991. The submission describes the developmental toxicity evaluation of C.I. disperse blue administered by gavage to New Zealand white rabbits. Health effects testing is required by this consent order. This chemical is used for dyeing or printing polyester fibers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44570). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 20, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-12630 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3959-5]

Public Water System Supervision Program: Primacy Delegation for the State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Indiana has applied for primary enforcement authority for the Public Water Supply Supervision (PWSS) program. Indiana has adopted drinking water regulations corresponding to the National Primary Drinking Water Regulations promulgated by the EPA. EPA has determined that the State regulations and program constituents meet the Federal requirements for primacy under 40 CFR 142.10, except for the Total Coliform Rule and Surface Water Treatment Rule. Therefore, except for the Total Coliform Rule and Surface Water Treatment Rule, EPA has tentatively decided to approve this State request for primacy authorization for the PWSS program. EPA is conditioning approval of Indiana's application upon the State's correction or clarification of certain provisions in the State statutes or regulations to ensure that the Indiana rules are fully consistent with Federal drinking water regulations. A list of the State statutory or regulatory provisions identified by EPA as needing corrections or clarifications is included in the docket. These items do not raise significant issues about Indiana's authority for, or implementation of, PWSS primacy.

All interested parties are invited to submit written comments or request a public hearing. Submission of written comments, or a request for a public hearing must be made within 30 days of the date of this Notice to the Regional Administrator, at the address shown below. If requests which indicate sufficient interest and/or significance are received by the end of this Notice period, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, approval of Indiana's application shall become effective 30 days from the date of this Notice.

Any request for a public hearing must include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Indiana Department of Environmental Management, Drinking Water Branch, 105 South Meridian Street, Indianapolis, Indiana 46206, State Docket Officer: Mr. Robert Hilton, Phone: (317) 233-4240.

United States Environmental Protection Agency, Region 5, Safe Drinking Water Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Thomas Poleck, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886-2407, or FTS/886-2407.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: May 20, 1991.

Ralph R. Bauer,

Acting Regional Administrator, EPA, Region 5.

[FR Doc. 91-12628 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 21, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

OMB Number: 3060-0213.

Title: Section 73.3525, Agreements for removing application conflicts.

Action: Revision.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 238 responses; 8 hours average burden per response; 1,904 hours total annual burden.

Need and Uses: Section 73.3525 requires applicants in a comparative proceeding for a broadcast station construction permit who enter into an agreement to withdraw, dismiss or amend an application to file with the FCC a joint request for approval of such agreement. The Report and Order, in MM Docket No. 90–263, adopted 12/31/90, limits settlement payments that may be received by competing applicants for new broadcast stations, until commencement of the trial phase of the proceeding, to legitimate and prudent out-of-pocket expenses, and prohibits any payments therefore. The attached Memorandum Opinion and Order, in MM Docket No. 90–263, adopted on 5/9/91, modified its decision to allow competing applicants to recover legitimate and prudent out-of-pocket expenses at any stage in the comparative hearing process. The data is used by FCC staff to assure that the agreement is in compliance with its Rules and Regulations and section 311 of the Communications Act of 1934, as amended.

OMB Number: 3060–0040.

Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority.

Form Number: FCC Form 404/404A.

Action: Revision.

Respondents: Individuals or households, states or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 38,000 responses; 33 hours average burden per response; 12,540 hours total annual burden.

Need and Uses: FCC Rules require that applicants filed the FCC 404 for a new station license, renewal, or modification of an existing license. An applicant filing for a new station license may operate the aircraft radio station pending issuance of a station license for a period of 90 days under a temporary operating authority evidenced by a properly executed certification on FCC 404A. The data will be used by FCC staff to determine eligibility for a radio station authorization, and to issue a radio station license. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

OMB Number: 3060–0079.

Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License.

Form Number: FCC Form 610B

Action: Extension.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 200 responses; .084 hours average burden per response; 17 hours total annual burden.

Need and Uses: FCC Rules require applicants to file FCC Form 610B to renew and/or modify Amateur Club, Radio Amateur Civil Emergency Service (RACES), or Military Recreation station licenses. The data is used by examiners to determine if the applicant is eligible for renewed and/or modified Amateur Club, RACES, or Military Recreation Station license.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–12605 Filed 5–28–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Companhia Anonima Venezolana De Navegacion, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties my inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006190–057.

Title: United States Atlantic and Gulf/Venezuela Freight Association.

Parties: Companhia Anonima Venezolana De Navegacion, American Transport Lines, Inc., Venezuelan Container Service, King Ocean Service de Venezuela, S.A., Maritima Aragua, S.A., Consorcio Naviero de Occidente, C.A.

Synopsis: The proposed amendment would modify article 5(b) by (1) eliminating the restriction on the number of container yards (CY) and container freight stations (CFS) that a member may have; (2) stipulating that the location of the CY's and/or CFS's shall be set forth in the tariff and (3) providing that no CY or CFS may be a shipper's or consignee's facility.

Agreement No.: 212–010027–29.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.E., Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line); Van Nievelt Goudriaan and Co., B.V.

Synopsis: The proposed amendment would delete Columbus Line, American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas, S.A. and Van Nievelt Goudriaan and Co., B.V. as parties to the Agreement. It would also redistribute pool shares and sailing requirements among the remaining parties.

Agreement No.: 212–010027–030.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment would add Companhia Maritima Nacional, American Transport Lines, Inc. and Empresa Lineas Maritimas Argentinas, S.A. as parties to the Agreement effective July 1, 1991. It would reestablish a 100 percent carrying rate for the pool period July 1, 1991 to September 30, 1991. It would also shorten the resignation notice period from 90 days to 30 days, and it would provide for four quarterly pool periods for 1991. Further, it would delete provisions concerning the immediate effectiveness of certain amendments to the agreement.

Dated: May 22, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–12578 Filed 5–28–91; 8:45 am]

BILLING CODE 6730–01–M

L.A. Cruise Ship Terminals Inc./Starlite Cruises (USA), Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200519.

Title: A. Cruise Ship Terminals Inc./ Starlite Cruises (USA), Inc. Terminal Agreement.

Parties. A. Cruise Ship Terminals Inc. Starlite Cruises (USA), Inc. (Starlite)

Synopsis: The Agreement, filed May 20, 1991, provides Starlite certain passenger vessel terminal facilities and services at the Port of Los Angeles Harbor.

Agreement No.: 224–200520.

Title: Georgia Ports Authority/Pan American Independent Line Terminal Agreement.

Parties. Georgia Ports Authority
Pan American Independent Line (PAIL)

Synopsis: The Agreement, filed May 20, 1991, provides PAIL a per container consolidated rate for wharfage, dockage, crane rental as well as other per container rates for related terminal services at Containerport, Savannah, Georgia. The Agreement's initial term is for three years.

Agreement No.: 224–200521.

Title: Maryland Port Administration/ Hobelmann Port Services, Inc. Terminal Agreement.

Parties. Maryland Port Administration
Hobelmann Port Services, Inc.

Synopsis: The Agreement, filed May 20, 1991, provides for the month to month lease of 10 acres at the Masonville Marine Terminal in the Port of Baltimore for the storage of import and export motor vehicles.

Agreement No.: 224–200370.

Title: Georgia Ports Authority/Star Shipping A/S Terminal Agreement.

Parties. Georgia Ports Authority
Star Shipping A/S

Synopsis: The Agreement, filed May 20, 1991, extends the term of the basic agreement between the parties for an additional year.

Dated: May 22, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–12567 Filed 5–28–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

NCNB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NCNB Corporation, Charlotte North Carolina; to engage *de novo* through its subsidiary, NCNB Capital Markets, Inc., Charlotte, North Carolina, in making, acquiring and servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the account of NCNB Capital Markets, Inc. or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Terrapin Bancorp, Inc., Elizabeth, Illinois; to engage *de novo* in conducting general insurance activities in Elizabeth, Illinois, a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12597 Filed 5-28-91; 8:45 am]

BILLING CODE 6210-01-F

Telluride Bancorp, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 17, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Telluride Bancorp, Ltd, Telluride, Colorado; to acquire San Miguel Investment Company, Norwood, Colorado, and thereby indirectly acquire San Miguel Basin State Bank, Norwood, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Roscoe Financial Corporation, Roscoe, Texas; to become a bank holding company by acquiring 75.1 percent of the voting shares of The Roscoe State Bank, Roscoe, Texas.

Board of Governors of the Federal Reserve System, May 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12596 Filed 5-28-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket. No. 9244]

Harbour Group Investments, L.P.; and Diethelm Holding (U.S.A.) Ltd.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would require, among other things, two producers of telescopes to seek prior Commission approval for certain mergers or acquisitions for a period of ten years.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S–2308, Washington, DC 20580. (202) 326–2815.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between Harbour Group Investments, L.P. ("Harbour Group"), a limited partnership, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission ("the Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Harbour Group is a limited partnership organized under the laws of Missouri, with its executive office at 7701 Forsyth Blvd., suite 600, Clayton, Missouri 53103.

2. Harbour Group has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, as amended, and section 7 of the Clayton Act, as amended. Harbour Group denies said charges.

3. Harbour Group admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Harbor Group wavies:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint issued by the Commission, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Harbour Group, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of this proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Harbour Group that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Harbour Group, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect as, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to order to Harbour Group's address as stated in this agreement shall constitute service. Harbour Group waives any right it may have to any other manner of service. The complaint may be used in construing the terms of this Order, and no agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

8. Harbour Group has read the complaint and the Order contemplated hereby. Harbour Group understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Harbour Group further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

Harbour Group means Harbour Group Investments, L.P., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, operating companies, successors, and assigns, as well as the officers, employees and agents of its parents, divisions, subsidiaries and operating companies.

Meade means Meade Instruments, a subsidiary of Harbour Group, as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

SCTs means mid-sized Schmidt-Cassegrain telescopes with apertures of eight (8) to eleven (11) inches used for astronomical viewing.

II

It is ordered That for a period commencing on the date this Order

becomes final and continuing for ten (10) years, Harbour Group shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of SCTs in the United States.

III

It is further ordered That Harbour Group shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of the stock of Meade, or a substantial part of the assets of Meade to any party that is engaged in or, to the best of Harbour Group's knowledge upon reasonable inquiry, is planning to, considering or contemplating engaging in the manufacture of SCTs in the United States or elsewhere for sale in the United States, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

IV

It is further ordered That Harbour Group shall within sixty (60) days after this Order becomes final and one year from the date this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

V

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Harbour Group made to its principal office, Harbour Group shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Harbour Group relating to any matters contained in this Order; and

(B) Upon five days notice to Harbour Group and without restraint or interference from Harbour Group, to interview officers or employees of Harbour Group, who may have counsel present, regarding such matters.

VI

It is further ordered That Harbour Group shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor partnership or corporation, the creation, dissolution or sale of subsidiaries (except subsidiaries not engaged in any manner, directly or indirectly, in the manufacture or sale of SCTs), including, but not limited to, sale of the stock or assets of Meade, or any other change that may affect compliance obligations arising out of this Order.

Agreement Containing Consent Order

The agreement herein, by and between Diethelm Holding (U.S.A.) Ltd. ("Diethelm USA"), a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission ("the Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Diethelm USA is a corporation organized under the laws of Nevada, with its executive office at 17 Gina Drive, Centerport, New York 11721.

2. Diethelm USA has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, as amended, and section 7 of the Clayton Act, as amended. Diethelm USA denies said charges.

3. Diethelm USA admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Diethelm USA waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint issued by the Commission, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Diethelm USA, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of this proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Diethelm USA that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commision pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Diethelm USA, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect as, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to order to Diethelm USA's address as stated in this agreement shall constitute service. Diethelm USA waives any right it may have to any other manner of service. The compliant may be used in construing the terms of this Order, and not agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

8. Diethelm USA has read the complaint and the Order contemplated hereby. Diethelm USA understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Diethelm USA further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

Diethelm USA means Diethelm Holding (U.S.A.) Ltd., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

Celestron means Celestron International, a subsidiary of Diethelm USA, as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and

assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

Celestron means Celestron International, a subsidiary of Diethelm USA, as well as its officers, emlployees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

SCTs means mid-sized Schmidt-Cassegrain telescopes with apertures of eight (8) to eleven (11) inches used for astronomical viewing.

II

It is ordered That for a period commencing on the date this Order becomes final and continuing for ten (10) years, Diethelm USA shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, equity interest, or assets that have at any time been used in the manufacture or sale of SCTs, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of SCTs in the United States, *provided,* this paragraph shall not require Diethelm USA to obtain prior approval of the Commission to purchase a foreign company that established its SCT manufacturing pursuant to contract with Diethelm USA and who, pursuant to such contract, may sell SCTs in the United States only to or through Diethelm USA or under the Celestron tradename.

III

It is further ordered That Diethelm USA shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of the stock of Celestron, or a substantial part of the assets of Celestron to any party that is engaged in or to the best of Diethelm USA's knowledge upon reasonable inquiry, is planning to, considering or contemplating engaging in the manufacture of SCTs in the United States or elsewhere for sale in the United States, that the acquiring party filed with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

IV

It is further ordered That Diethelm USA shall within sixty (60) days after this Order becomes final and one year from the date of this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

V

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Diethelm USA made to its principal office, Diethelm USA shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records documents in the possession or under the control of Diethelm USA relating to any matters contained in this Order; and

(B) Upon five days notice to Diethelm USA and without restraint or interference from Diethelm USA, to interview officers or employees of Diethelm USA, who may have counsel present, regarding such matters.

VI

It is further ordered That Diethelm USA shall notify the Commission at least thirty (30) days prior to any proposal change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or partnership, the creation, dissolution or sale of subsidiaries (except subsidiaries not engaged in any manner, directly or indirectly, in the manufacture or sale of SCTs), including, but not limited to, sale of the stock or assets of Celestron or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted agreements containing proposed consent orders from Harbour Group Investments L.P. ("Harbour Group") and Diethelm Holding (U.S.A.) Ltd. ("Diethelm"), concerning a proposed joint venture between their respective telescope subsidiaries, Meade Instruments ("Meade") and Celestron International ("Celestron"). The proposed orders require Harbour Group and Diethelm to seek prior approval for certain mergers or acquisitions for a period of ten (10) years.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and any comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

In May 1990, Harbour Group and Diethelm entered into a joint venture agreement which when consummated would combine their respective telescope subsidiaries. On October 15, 1990, the Federal Trade Commission filed a preliminary injunction action against Harbour Group and Diethelm in the United States District Court for the District of Columbia seeking to enjoin the proposed joint venture pending an administrative trial on the legality of the proposed joint venture. The Commission won a preliminary injunction on November 8, 1990; the district court's opinion supporting the injunction was issued on November 19, 1990.

On November 28, 1990, the Commission issued an administrative complaint against Harbour Group and Diethelm which alleges that the proposed joint venture violates the provisions of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges that both Meade and Celestron are competitors in the market for mid-sized Schmidt-Cassegrain telescopes ("SCTs"). The complaint also alleges that the market is highly concentrated and that the barriers to entry into the manufacture and sale of SCTs are significant. The complaint alleges that the effects of the proposed joint venture would be substantially to lessen competition or tend to create a monopoly in the SCT market.

The first paragraph of each proposed order defines the terms used in the order. Paragraph II of each order bans Harbour Group and Diethelm respectively from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any stock, share capital, or assets used to manufacture or sell SCTs of any company that has manufactured or sold SCTs in the United States. This ban lasts ten (10) years from the date the order becomes final.

The third paragraph of each proposed order requires that any successor partnership or corporation to Meade or Celestron that is engaged in the manufacture of SCTs in the United States or is considering doing so shall agree to be bound by this order to the same extent as Harbour Group and Diethelm.

Paragraphs IV and V of the proposed orders require that Harbour Group and Diethelm each provide annual reports to the Commission of their compliance with provisions of the order and that the Commission be afforded an opportunity to review their compliance with the order, if necessary.

Paragraph VI of the proposed orders require that Harbour Group and Diethelm each notify the Commission at least thirty (30) days prior to any proposed change in the partnership or corporation that may affect their compliance obligations arising out of the order.

The Commission anticipates that the effect of the proposed orders will be to maintain the opportunity for competition in the market for SCTs in the United States.

The agreements are for settlement purposes only and do not constitute an admission by Harbour Group or Diethelm that the law has been violated as alleged in the complaint issued by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-12613 Filed 5-28-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3329]

Nobody Beats the Wiz, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey retailer of consumer electronic goods from violating the Pre-Sale Availability Rule, promulgated under the Magnuson-Moss Warranty Act, requiring warranty disclosures. In addition, respondent is required to instruct all current and future Wiz retail-store managers engaged in the sale of consumer products as to their obligations and duties under the Act.

DATES: Complaint and Order issued May 7, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Alice Au, Federal Trade Commission, New York Regional Office, 150 William St., suite 1300, New York, NY 10038, (212) 264-1207.

SUPPLEMENTARY INFORMATION: On Monday, February 25, 1991, there was published in the Federal Register, 56 FR 7710, a proposed consent agreement with analysis In the Matter of Nobody Beats the Wiz, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Donald S. Clark,

Secretary

[FR Doc. 91-12611 Filed 5-28-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3330]

he Torrington Company, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two producers of needle rollers, The Torrington Company, of Connecticut, and Universal Bearings, Inc., of Indiana, from implementing or otherwise providing for any consolidation of the business or assets of the entity to be acquired and the acquiring entity prior to the consummation of any proposed acquisition.

DATES: Complaint and Order issued May 10, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Casey Triggs, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: February 25, 1991, there was published in the Federal Register, 56 FR 7712, a proposed consent agreement with analysis In the Matter of the Torrington Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-12612 Filed 5-28-91; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement for the Construction of the Eastern Portion of the Southest Federal Center and the Construction of the General Services Administration Headquarters Facility, Washington, DC.

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the following: (1) Construction of the eastern portion of the Federally-owned Southeast Federal Center (SEFC) site (the area east of an extended New Jersey Avenue); and, (2) construction of a facility, on the SEFC site, to house the GSA headquarters.

The SEFC, a 55.3 acre site along the Anacostia River, is adjacent to the Navy Yard and approximately one mile south of the U.S. Capitol. The site is bounded on the north by M Street, SE; on the east by the Washington Navy Yard; on the south by the Anacostia River; and on the west by 1st Street, SE. The northwest portion of the site is adjacent to the new Navy Yard Metro Rail Station, which will service the "Green Line". This waterfront project site is currently improved with a number of industrial structures used for office, storage and light industrial activities. The SEFC is eligible for listing on the National

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Register for Historic Places. Approximately 3,000 Federal employees currently work at the SEFC.

GSA's plans for the site include the development of office and retail space and the relocation of employees to the SEFC. This development will create an urban atmosphere conducive to a successful waterfront development which will be accessible to the general public. Design and construction of the eastern portion of the SEFC is proposed to commence in fiscal year 1992, and be completed by the year 2001.

The GSA headquarters facility, which will be located on the eastern portion of the site, will contain approximately 959,000 gross square feet (GSF) [700,000 occupiable square feet (OSF)] of office and related space and will house approximately 4,265 employees. Design and construction of the GSA headquarters facility will commence in fiscal year 1992. The occupancy date for this building is projected for fiscal year 1996.

The National Capital Planning Commission (NCPC) will act as cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6.

The EIS will be developed in two phases. Phase I of the EIS will examine the general impact of constructing the eastern portion of the SEFC based on the following alternatives:

- Developing the eastern portion of the SEFC to accommodate 4.3 million gsf of first class office space and 174,000 gsf of retail space; or
- Developing the eastern portion of the SEFC to accommodate 3.6 million gsf of first class office space and 147,000 gsf of retail space; or
- Not developing the eastern portion of the SEFC and instead, continuing to lease an equivalent amount of office space in the District of Columbia.

Phase II of the EIS will examine the impact of the construction of the GSA headquarters facility. The examination will be based on the following alternatives:

- Construction of a new GSA headquarters facility of approximately 965,500 gsf (700,000 osf) in size.
- Status quo: (approximately 494,000 osf in three Government-owned buildings in the District of Columbia, approximately 193,000 osf leased space in Northern Virginia, and approximately 21,000 osf of leased space in Maryland.)

Phase II is to be presented in the EIS report as a supplement and will only address those impacts which are the result of GSA's relocation (versus any other agency's relocation) to the SEFC (e.g. transportation, consolidation, vacating office space in Maryland and Virginia, etc.).

Potential environmental impacts resulting from the proposed action include short term impacts during construction, and long term changes in traffic, socio-economic and fiscal conditions.

GAS will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on June 19, 1991, at 7 pm in Building #159, 1st floor, room 102, 3rd & M Street, SE, South East Federal Center, Washington, DC.

A formal presentation will precede the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county and city agencies, as well as interested individuals and groups take ths opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

All written statement and/or questions regarding the scoping process should be mailed no later than July 5, 1991, to: Mr. Frank T. Thomas—WPL, Contracting Officer Technical Representative, room 7062, National Capital Region, General Services Administration, 7th & D Streets SW., Washington DC 20407 (telephone 202/708–5334).

Dated: May 17, 1991.

Linda Eastman,

Director, NCR Planning Staff—WPL.

[FR Doc. 91–12550 Filed 5–28–91; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

Statement of Organization, Functions and Delegations of Authority

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Correction notice.

SUMMARY: This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services to reflect technical corrections in Chapter AF (Office of Inspector General) to add the Accounting and Financial Management Audits component to the Office of Audit Services.

SUPPLEMENTARY INFORMATION: Chapter AFH.00 is amended as follows:

1. Under the heading *Section AFH.00 Office of Audit Services (OAS)—Mission add the following:*

E. The office serves as the focal point for all financial audit activity within the department and will provide the primary liaison conduit between the OIG and departmental management.

Provides overall leadership and direction in carrying out the responsibilities mandated under the Chief Financial Officers Act relating to financial statement audits and Federal Managers Financial Integrity Act for matters relating to internal controls.

2. Under the heading *Section AFH.10 Office of Audit Services—Organization* add the new component G. Accounting and Financial Management Audits.

3. Under the heading *Section AFH.20 Office of Audit Services—Functions* add the following:

G. Accounting and Financial Management Audits. This office is directed by the Assistant Inspector General for Accounting and Financial Management Audits who also serves as the Audit Director for Accounting and Financial Management Audits. The office is the focal point for all financial audit activity within the Department and provides the primary liaison conduit between the OIG and Departmental management. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all financial statement audit activities performed by, or on behalf of, the Department.

Dated: May 15, 1991.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

[FR Doc. 91–12566 Filed 5–28–91; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the Federal Register on May 3, 1991, Volume 56, No. 86, on page 20432 that:

The Drug Abuse Clinical and Behavioral Research Review Committee, NIDA, would meet June 11–14 at the Brazilian Court, 301 Australian Avenue, Palm Beach, FL. This meeting has been canceled.

Dated: May 22, 1991.

Peggy W. Cockrill,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–12604 Filed 5–28–91; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–4410–08 GP1–238]

Spokane District West Side State Exchange; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the finding of no significant impact on the final planning analysis for Spokane District West Side State Exchange.

SUMMARY: In accordance with 43 CFR 1610.5 and section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, notice is hereby given of the issuance of the Decision Record for the Planning Analysis for the Spokane District West Side State Exchange, involving Federal land administered by the Bureau of Land Management and State Lands administered by the Washington Department of Natural Resources in Clallam, King, Okanogan, San Juan, Skagit and Skamania Counties, Washington. Initiation of actions, which implement this plan, can begin with the signing of the Decision Record.

SUPPLEMENTARY INFORMATION: The Draft Planning Analysis was released for a 60 day comment period beginning on March 19, 1991. No comments indicating opposition to the exchange proposal where received. However, continuing evaluation by BLM biologists has indicated the possibility of spotted owl habitat on three of the selected parcels. As a result a biological assessment is being conducted of the parcels.

The exchange proposal addressed in this document had its beginnings in early 1985, when the State Department of Natural Resources (DNR) proposed a trade of its 20.1 acre parcel adjacent to the BLM Iceberg Point land for the BLM's 77.25 acre tract near DNR land at Point Lawrence. The stated objective at that time was for both the BLM and DNR to consolidate their lands, the BLM intending to include the acquired land in a proposed Area of Critical Environmental Concern (ACEC) designation for Iceberg Point. Although an exchange agreement was signed, processing on the action was delayed until recently, when the proposal was enlarged to include 120 acres of DNR land at Chadwick Hill on Lopez Island, and seven additional parcels of BLM land scattered in five different countries. The objective is still the consolidation of both BLM and DNR ownerships, which is expected to result in more effective and efficient management of the respective lands. The exchange lands would be added to the ACEC, and managed as a natural area in accordance with the existing plan and Bureau ACEC Guidelines.

The purpose of this document is to comply with Federal regulations, which require that both an environmental assessment and a planning analysis be performed to examine the resource values of the lands, analyze long term management goals, and determine if these actions are in the public interest.

Only two alternatives were considered. The Preferred Alternative and the No Action Alternative.

Under the Preferred Alternative, the Federal government would acquire the surface and mineral estate of the offered State lands, exchanging in return the surface and mineral estate of all or a portion of the selected Federal lands. The land obtained through this exchange would be incorporated into the existing Iceberg Point and Point Colville ACEC and managed as a Natural Area.

The No Action Alternative would result in the continuation of the existing situation. Under this alternative, none of the selected public lands would pass out of Federal ownership, and no effort would be made to acquire any parcels in the vicinity of the existing ACECs

DECISION: The decision is to proceed with the exchange as indicated under the proposed action with the following exception. The three public land parcels that were identified during the comment period as possibly containing Spotted Owl habitat would not be exchanged unless the biological assessment indicates that there is no conflict.

FOR FURTHER INFORMATION CONTACT: Joseph K. Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202, or James F. Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.

Copies of the Final are available for review at the following offices and libraries:

U.S. Bureau of Land Management, Spokane District Office, East 4217 Maine Avenue, Spokane WA 99202.

U.S. Bureau of Land Management, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.

Washington State Library, State Library Building, Olympia, WA 98504.

San Juan County Court House Annex Library, 135 Rhone Street, Friday Harbor, WA 98250.

A limited supply of copies of the Planning Analysis are available upon request to the Spokane District Manager or the Wenatchee Resource Area Manager.

Dated: May 23, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91–12599 Filed 5–28–91; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 11, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 13, 1991.

Carold D. Shull,

Chief of Registration, National Register.

ALASKA

Matanuska—Susitna Borough-Census Area

Bailey Colony Farm (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 3150 N. Glenn Hwy., Palmer vicinity, 91000775.

Berry House (Settlement and Economic Development of Alaska's Matanuska—

Susitna Valley MPS), 5805 N. Farm Loop Rd., Palmer vicinity, 91000779.
Herried House (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 4400 N. Palmer—Fishook Hwy., Palmer vicinity, 91000778.
Hyland Hotel (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 333 W. Evergreen, Palmer vicinity, 91000774.
Matanuska Colony Community Center (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), Roughly bounded by S. Colony, E. Firewood, S. Eklutua, E. Elmwood, S. Denali and a line N of properties on E. Dahlia, Palmer, 91000773.
Patten Colony Farm (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), Mi. 39.9 Glenn Hwy., across from State Fairground, Palmer vicinity, 91000776.
Puhl House (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 13151 E. Scott Rd., Palmer vicinity, 91000777.

ARIZONA

Maricopa County

Willo Historic District (Boundary Increase), 534—540 W. Wilshire Dr. and 533—541 W. Virginia Ave., Phoenix, 91000780.

GEORGIA

Coweta County

Grantville Historic District, Bounded by US 29, LaGrange St., W Grantville Rd. and the city cemetery, Grantville, 91000772.

MAINE

Aroostook County

Church of the Advent, Church St. 1 block S of jct. with ME 229, Limestone, 91000767.

Knox County

Surprise (schooner), Camden Harbor, Camden, 91000771.

Lincoln County

St. John's Episcopal Church, S side of ME 27 at jct. with Blinn Hill Rd., Dresden Mills, 91000769.

Somerset County

First Baptist Church, Former, W side of Main St., S of ME 104, Skowhegan, 91000770.

York County

First Congregational Church, Former, SW corner of Rt. 1 and Barker's Ln., Wells, 91000768.

MONTANA

Ravalli County

Bitter Root Cooperative Creamery, [Stevensville MPS], 3730 Eastside Hwy., Stevensville, 91000726.
Buck, Charles Amos, House [Stevensville MPS], 211 Buck St., Stevensville, 91000727.
Buck, Charles and Eva, House, [Stevensville MPS], 405 Buck St., Stevensville, 91000728.
Buck, Fred, House [Stevensville MPS], 217 Buck St., Stevensville, 91000729.
Caple, W. T., House [Stevensville MPS], 210 Church St., Stevensville, 91000730.
Clark, Jennie, House [Stevensville MPS], 423 Pine St., Stevensville, 91000731.
Cochran, William, House [Stevensville MPS], 3713 East Side Hwy., Stevensville, 91000732.
Cook, Calvin and Maggie, House [Stevensville MPS], 501 Main St., Stevensville, 91000734.
Cook, Wilbur, House [Stevensville MPS], 3717 East Side Hwy., Stevensville, 91000733.
Emhoff House [Stevensville MPS], 401 Church St., Stevensville, 91000736.
First State Bank, Dowling and Emhoff Buildings [Stevensville MPS], 300—304, 306—308 Main St., Stevensville, 91000738.
Fisher, Joseph, House [Stevensville MPS], 103 College St., Stevensville, 91000739.
Foust, Perry, House [Stevensville MPS], 401 Mission St., Stevensville, 91000740.
Fulton, Charles, House [Stevensville MPS], 377 Fifth St., Stevensville, 91000742.
Gavin House [Stevensville MPS], 219 College St., Stevensville, 91000743.
Gleason Building [Stevensville MPS], 200—202 Main St., Stevensville, 91000744.
Harrington, Rose, House [Stevensville MPS], 3709 East Side Hwy., Stevensville, 91000745.
Howe, John G., House [Stevensville MPS], 215 Park Ave., Stevensville, 91000746.
IOOF Hall [Stevensville MPS], 217—219 Main St., Stevensville, 91000747.
Lancaster House [Stevensville MPS], 407 Third St., Stevensville, 91000748.
Lockridge House [Stevensville MPS], 301 Mission St., Stevensville, 91000750.
May, Albert, House [Stevensville MPS], 218 Church St., Stevensville, 91000751.
May, Charles, House [Stevensville MPS], 109 Church St., Stevensville, 91000753.
May, Harry, House [Stevensville MPS], 526 Third St., Stevensville, 91000752.
May, Louis, House [Stevensville MPS], 100 Church St., Stevensville, 91000754.
McFarlane House [Stevensville MPS], 200 College St., Stevensville, 91000755.
McLaughlin, John, House [Stevensville MPS], 105 Main St., Stevensville, 91000757.
Metcalf House [Stevensville MPS], 214 Pine St., Stevensville, 91000758.
Morr, Philip and Ella, House [Stevensville MPS], 502 Buck St., Stevensville, 91000760.
Sharp, John, House [Stevensville MPS], 306 College St., Stevensville, 91000761.
Stevensville Feed Mill [Stevensville MPS], 407 Main St., Stevensville, 91000762.
Stevensville Grade School—United Methodist Church [Stevensville MPS], 216 College St., Stevensville, 91000764.
Stevensville Mercantile Company Oil Storage Building [Stevensville MPS], 300 Mission St., Stevensville, 91000763.
Thornton Hospital [Stevensville MPS], 107 E. Third St., Stevensville, 91000765.
Williams House [Stevensville MPS], 500 Fifth St., Stevensville, 91000766.
Williams, John and Ann, House [Stevensville MPS], 205 Church St., Stevensville, 91000735.
Young, Benjamin, House [Stevensville MPS], 523 Main St., Stevensville, 91000741.

[FR Doc. 91-12595 Filed 5-28-91; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 16, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 13, 1991.

Carol D. Shull,
Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Potomac Boat Club, 3530 Water St., NW., Washington, 91000786

GEORGIA

White County

Stovall, John, House, Stovall Rd. S of jct. with GA 255, White vicinity, 91000784

INDIANA

Hancock County

New Palestine School, Larrabee St. at jct. with Depot St., New Palestine, 91000791

Johnson County

Edinburgh Commercial Historic District, Roughly bounded by Thompson and Main Sts., the alley N of Main Cross St. and the Conrail RR tracks, Edinburgh, 91000789
Greenwood Commercial Historic District, 172—332 W. Main St. and 147—211 S. Madison Ave., Greenwood, 91000792

La Porte County

Washington Park, Roughly bounded by Lake Michigan, Krueger St., Trail Cr., Lakeshore Dr., Heisman Harbor Rd. and Browne Basin Rd., Michigan City, 91000793

Madison County

Pendleton Historic District, Roughly bounded by Fall Cr., the Conrail right-of-way, Madison and Adams Sts., Pendleton, 91000788

Marion County

Indiana School for the Deaf, 1200 E. 42nd St., Indianapolis, 91000790
St. Joseph Neighborhood Historic District, Roughly bounded by St. Clair, Delaware and Eleventh Sts. and Central and Ft. Wayne Aves., Indianapolis, 91000794

Wayne County

Cambridge City Historic District, Roughly bounded by Boundary, Maple, High and Fourth Sts., Cambridge City, 91000787

NEW JERSEY

Cape May County

Cold Spring Presbyterian Church, 780 Seashore Rd., Lower Township, 91000785

TEXAS

Brazoria County

Brazoria Bridge, 0.9 mi. E of TX 36 of TX 332, Brazoria, 91000783

WASHINGTON

King County

Blomeen, Oscar, House, 324 B St. NE., Auburn, 91000781

Parsons, William, House, 2706 Harvard Ave. E., Seattle, 91000782

A proposed move is being considered for the following property. To assist in its preservation, the commenting period is being waived.

SOUTH CAROLINA

Lexington County

Stewart, James, House (Lexington County MRA), Address Restricted, Lexington vicinity, 83003917

[FR Doc. 91-12659 Filed 5-28-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303-TA-21 (Preliminary) and 731-TA-519 (Preliminary)]

Gray Portland Cement and Cement Clinker From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303-TA-21 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) and of preliminary antidumping investigation No. 731-TA-519 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of gray portland cement and cement clinker, provided for in subheadings 2523.29.00, 2523.90.00, and 2523.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Venezuela and sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by July 5, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR Part 201, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-252-1190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 21, 1991, by the Ad Hoc Committee of Florida Producers of Gray Portland Cement, Washington, DC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 11, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-252-1190) not later than June 7, 1991, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 14, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 22, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12593 Filed 5-28-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSON

Nonacceptance of Insurance Facsimiles (FAX)

The requirements for insurance filings and cancellation notices are set forth in the Commission's regulations at 49 CFR parts 1043 and 1084. Under these regulations, hard copies of certificates of insurance, surety bonds and notices of cancellation must be filed with the Commission in triplicate. All insurance filing and cancellation notices must be filed in accordance with these regulations.

Accepting FAX insurance filings and cancellation notices with follow-up by mail, places too great a burden on the limited staff available to process these documents. Accordingly, FAX insurance filing will not be accepted.

FOR FURTHER INFORMATION CONTACT: Edward Fernandez (202) 275–7591.

Sidney L. Strickland, Jr.

Secretary

[FR Doc. 91–12655 Filed 5–28–91; 8:45 am]

BILLING CODE 7035–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31650 (Sub-No. 1); Finance Docket No. 31651 (Sub-No. 1)]

Burlington Northern Railroad Co.; Construction and Operation Exemption, Connector Track at Atmore, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts, under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901; (1) The construction by the Burlington Northern Railroad Company (BN) and CSX Transportation, Inc. (CSXT), and the operation by BN of approximately 1,034 feet of connecting line at Atmore, AL; and (2) the construction and operation by BN and CSXT of approximately 1,062 feet of connecting line in Atmore, AL.

DATES: The exemptions will be effective upon completion of the Commission's environmental review and further decision. Petitions for reconsideration must be filed by June 24, 1991.

ADDRESSES: Send pleadings, referring to Docket No. 31650 (Sub-No. 1), *et al.*, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representatives: Edmund W. Burke, Douglas J. Babb, Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information as contained in the Commisison's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: May 3, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–12656 Filed 5–28–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31876]

SPTC Holding, Inc., and Southern Pacific Transportation Co., Corporate Family Transaction Exemption, SPCSL Corp.

SPTC Holding, Inc. (SPTCH), a non-carrier holding company, and Southern Pacific Transportation Company (SPTC), a common carrier by railroad, have filed a notice of exemption for the acquisition of indirect and direct control, respectively, over SPCSL Corp. (SPCSL), a common carrier by railroad. Prior to this change of control both SPCSL and SPTCH were directly owned subsidiaries of Rio Grande Industries, Inc. (RGI), a non-carrier holding company. After consummation of this transaction, SPCSL will be a directly owned subsidiary of SPTC, and indirectly controlled by RGI, through SPTCH.

The purpose of this transaction, which was to be consummated May 11, 1991, is the simplification of intercorporate control among transportation companies in the RGI corporate family. This will be facilitated by making SPCSL a subsidiary of, and reporting directly to, SPTC, instead of to RGI, the parent holding company.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John MacDonald Smith, 813 Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

Decided: May 16, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–12657 Filed 5–28–91; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–46]

NASA Advisory Council University Relations Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council University Relations Task Force.

DATES: June 21, 1991, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The University Relations Task Force, reporting to the Council, will examime current forecasts of future national requirements for aerospace science and engineering and their supporting university infrastructure; it will also evaluate the degree, mechanisms, and appropriateness of NASA support for university programs in these fields. The Task Force is chaired by Dr. Steven Muller and is composed of 11 members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

June 6, 1990

9 a.m.—Welcome and Introductory Remarks.

9: 15 a.m.—Review of Key Issues.

10 a.m.—Discussion with NASA Center Directors.
1 p.m.—Discussion with NASA Advisory Council Committee Chairs.
3 p.m.—Review of Funding Data.
4 p.m.—Study Agenda.
5 p.m.—Adjourn.

Dated: May 22, 1991.

John W. Gatt,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12608 Filed 5-28-91; 8:45 am]

BILLING CODE 7510-10-M

THE NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governor's Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial chairman.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes discussion of indicators to include in the September 1991 report card to the Nation.

DATE: The sixth meeting is scheduled for Monday, June 3, 1991 in the afternoon. Time TBA.

ADDRESS: Location TBA.

FOR FURTHER INFORMATION CONTACT: Pat Forgione at the National Education Goals Panel office to indicate attendance or for further information on specific time and location. The phone number is (202) 632-0952.

Dated: May 22, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-12772 Filed 5-28-91; 8:45 am]

BILLING CODE 2701-31-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 6, 1991 through May 16, 1991. The last biweekly notice was published on May 15, 1991 (56 FR 22460).

Notive of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 28, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: April 2, 1991

Description of amendments request: The proposed Technical Specification (TS) changes modify the Definitions, Section 1.8, Item 1.8.3 and the Surveillance Requirements, Section 4.6.1.1.b, for both units. Section 1.8 defines when containment integrity exists, Item 1.8.3 defines the conditions the containment air locks must meet to assure containment integrity, and Section 4.6.1.1.b specifies the required surveillances of the air locks to assure containment integrity. The proposed changes would remove the existing requirement that the air locks be operable in both the definitions and surveillance sections, and replace it with the requirement that the air locks be in compliance with the requirements of TS Section 3.6.1.3. Section 3.6.1.3 provides the Limiting Conditions of Operation (LCO), Applicable Modes, and Actions to be taken when the air locks are inoperable. The design of the air locks and the impact of their being inoperable in relation to overall primary containment integrity was taken into consideration in establishing the LCOs and action statements of TS Section 3.6.1.3. The change will allow the use of the current specified out-of-service times to repair air lock problems prior to requiring unit shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment air locks are not considered as initiators for any previously evaluated accident. This change does not impact their design and therefore does not significantly increase the probability that they would initiate any previously evaluated accident.

The safety analyses consider the containment leakage barrier to be intact and

maintaining the leakage at less than the assumed value at the initiation of the evaluated accidents that occur during operation. Since each air lock door is designed to provide that containment barrier and is periodically tested to assure that leakage is not excessive, this change will not significantly increase the consequences of any previously evaluated accidents.

(2) Would not create the possibility of a new or different type of accident previously evaluated.

This change does not involve a change to the design of the plant. The new method of operation will not involve any components which could initiate an accident. Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

The margin of safety for the containment integrity specification is provided by assuring that the release of radioactive materials from the containment atmosphere will be restricted to those leakage paths and associated leak rates assumed in the accident analyses. Since each air lock door is designed to provide that containment barrier, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: April 23, 1991

Description of amendment request: The proposed amendment revises the minimum critical power ratio (MCPR) safety limit specified in Technical Specification 2.1.2 from 1.06 to 1.07 for Cycle 10 operation. In addition, Technical Specification 5.3.1 is being revised to reflect the new fuel type (GE8x8NB-3) which will be inserted during the upcoming refueling outage.

Basis for proposed no significant hazards consideration determination: Required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The NRC accepted methodology used to derive the updated safety limit MCPR of 1.07 applies the same criteria as that used to derive the current safety limit MCPR value of 1.06. The updated safety limit MCPR value of 1.07 assures that fuel cladding protection equivalent to that provided with the safety limit MCPR value of 1.06 is maintained. Thus, the consequences of accidents previously evaluated are not significantly increased. The safety limit MCPR does not affect any physical system or equipment which could change the probability of an accident.

Use of the GE8x8NB-3 fuel type was generically found to be acceptable by the NRC in Amendment 21 to GESTAR-II. The fuel design has been analyzed using approved methods documented in GESTAR-II with the results being within accepted limits. As discussed above, the MCPR safety limit was selected to maintain the fuel cladding integrity safety limit. The GE8X8NB-3 fuel response to analyzed transients will be performed and appropriate operating limit MCPR values will be incorporated in the Core Operating Limits Report as required by Technical Specification 6.9.3.1.

Therefore, based on the arguments presented above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Adoption of the proposed MCPR safety limit does not affect the function of any component or system. The GE8x8NB-3 fuel type was previously reviewed and found acceptable by the NRC for use as documented in Amendment 21 to GESTAR-II. No new mode or condition of plant operation will be authorized by this change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The safety limit MCPR value is determined for cycle specific application of fuel types as described in NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel," to meet Criterion 10 of 10 CFR 50, Appendix. The GE8x8NB-3 fuel type and its associated analysis methodologies were reviewed and found acceptable by the NRC in Amendment 21 to GESTAR-II.

Analyses of the limiting anticipated operational occurrences for each cycle are used in conjunction with the applicable safety limit MCPR value to determine cycle specific operating limit MCPR values. The above referenced methods are used to ensure required margins to safety (e.g., fuel cladding integrity safety limit and reactor coolant system integrity) are maintained. The MCPR safety limit was selected to maintain the fuel cladding integrity safety limit (i.e., that 99.9 percent of all fuel rods in the core be expected to avoid boiling transition). Use of the 1.07 safety limit MCPR for Cycle 10 will result in equivalent fuel cladding protection as that provided by the current cycle limit of 1.06. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Anthony J. Mendiola

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: April 18, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications to reflect a modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. A similar amendment was issued for Unit 1 and noted in the Federal Register on March 20, 1991 (56 FR 11789).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident.

The turbine control valve fast closure scram is provided to anticipate the rapid increase in pressure and neutron flux resulting from the fast closure of the turbine control valves due to a load reject and subsequent failure of the bypass valves (UFSAR section 14.1.2, 3.2.5.4). The turbine control valves are required to fast close as rapidly as possible to prevent overspeed of the turbine-generator rotor. The rapid closure of the control valves causes a sudden reduction of the steam flow which results in an increase to reactor pressure. The scram is provided to prevent the violation of the minimum critical power ratio (MCPR) safety limit.

The use of a pressure switch (in lieu of the limit switch) does not involve a significant increase in the probability of the transient. Upon actuation of the fast acting solenoid, the new pressure switch will sense the decreasing electro-hydraulic control (EHC) fluid (indicative of the control valve closure) and provide a reactor scram. The use of the pressure switch, therefore, provides the same function as the limit switch. In addition, the logic for the RPS trip remains the same. The pressure switches on fast acting solenoid valves for control valves 1 and 2 input to the Reactor Protection System (RPS) Channel A.

Either pressure switch will cause the RPS channel to trip. Similarly, the pressure switches on the fast acting solenoid valves for control valves 3 and 4 input into Reactor Protection System Channel B. In order to achieve a full reactor scram, both RPS channels must be tripped.

The use of the pressure switch does not affect the limiting parameter (MCPR) of the transient. As such, there would be no sequence of events which would lead to the safety limit being exceeded and barrier integrity would be assured. Additionally, the proposed change would not change, degrade or prevent the responses of systems assumed in the accident(s) nor alter any assumptions previously made in evaluating the radiological consequences of an accident described (above) in the SAR.

The consequences of the turbine/generator load reject with the subsequent failure of the bypass valves are not significantly increased by this change. The pressure switch provides a scram signal to RPS when the turbine control valves close rapidly in the same time period as the position switch in place. The use of a pressure switch to input into the Reactor Protection System is widely used throughout the industry and has been shown to be reliable. The results of the accident (the lowest MCPR achieved) are, therefore, not significantly affected and are bounded by the existing analysis. The existing analysis concludes that under this transient, the site boundary doses are well within the 10 CFR 100 limits.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The significant difference between the existing valve design and the proposed design is the use of a pressure switch in lieu of a limit switch. The use of the pressure switch eliminates the failure mode associated with the limit switch and inherently introduces its own failure mode. The failure of the tubing which connects the pressure switch to the solenoid valve would initiate a scram signal. The use of the pressure switch to input into the Reactor Protection System is widely used throughout the industry and has been shown to be reliable. Based on industry experience, the new design of the fast acting solenoid valve has been more reliable in actuating the fast closure of control valves than the use of the existing design.

The logic for the RPS trip remains unchanged. In order to create a reactor scram, the logic is arranged such that actuation of the pressure switches for the fast acting solenoid valves on control valve 1 or 2 and 3 or 4 will initiate a reactor scram. Therefore, in order for the scram function to fail, two pressure switches would have to fail within the same RPS channel (which is the same RPS failure mode as the existing design).

The fast closure of the turbine control valves is considered to be an anticipatory reactor scram. The reactor pressure and neutron flux would increase significantly in the event of the turbine fast closure without a scram; however, the reactor pressure (1060 psig) or the high neutron flux scrams provide backup to the turbine fast closure scram, in the event that sensor fails to actuate RPS.

The existence of the new failure mode, therefore, does not introduce the possibility of a new or different kind of accident than previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The limiting event associated with the turbine control valve fast closure is the load reject with failure of the bypass valves. A reactor scram is initiated, when the turbine control valves fast close, to anticipate the increase in reactor pressure and neutron flux, thereby ensuring that the MCPR safety limit is not violated. The use of the pressure switch does not affect the margin of safety associated with the MCPR safety limit since the pressure switch will initiate the reactor scram within the same time period as the existing design. The trip setpoint was calculated to ensure that a reactor scram will be initiated when the turbine control valves start to close rapidly.

The proposed fast acting solenoid valves are designed such that the pressure switch will be actuated within 30 milliseconds of the time the control valves start to close. Also, current Technical Specifications require that the RPS trip actuator contacts be actuated within 50 milliseconds of the actuation of the pressure switch. These times are consistent with the design values used in the Reload Licensing calculation to analyse the load reject without bypass valve transient. The trip setpoint was calculated such that the trip signal will be generated within the 30 milliseconds after the start of the control valve fast closure. Verification of the 30 millisecond actuation will be conducted during post modification testing. This modification, therefore, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 3, 1991

Description of amendments request: The proposed amendment would revise Technical Specification 3.2.1.F to allow a reduction in the boric acid system concentration from 12% to 3.4%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the boric acid system is to maintain adequate boric acid volume and concentration and transfer capabilities to borate the RCS to a cold shutdown concentration at any time during the core cycle, with a shutdown margin that is consistent with the Technical Specifications. The boric acid system and its function are not assumed to be a precursor to any design basis accident assumed in the Safety Analysis Report. The boric acid system is not assumed in the mitigation of any design basis accident or transient. The only credited source of borated water injection to the reactor coolant system for accident mitiagation is from the Refueling Water Storage Tank. Implementing this change does not alter nor does it create any new radiological release pathways to the environment. As such, the changes proposed to the boric acid system do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The failure of the boric acid system does not initiate any new or different kind of accident from any previously evaluated. These proposed changes do not degrade the boric acid systems' reliability or operation as designed. Additionally, since the corrosive property of boric acid is accelerated at higher concentration and temperatures, a nominal 3.4% concentration actually minimizes the potential for corrosion of equipment, valves, and piping surfaces. The modifications proposed by this license amendment request will maintain system boration capabilities consistent with the assumptions made in the UFSAR, and will result in a significant increase in system reliability and availability. As such, the implementation of this specification does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not represent a significant reduction in a margin of safety.

The function of the boric acid system is not assumed in any accident analyses. The boric acid system is not a process variable assumed in any design basis accident. During an accident the credited source of boron injection into the reactor coolant system is the Refueling Water Storage Tank. The function of the boric system is to provide a source of concentrated boric acid to the reactor during normal operations. The design function of the boric acid system has not been altered as a result of these changes. As such, the proposed change does not represent a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 9, 1991

Description of amendments request: The proposed amendment would revise Technical Specification 4.0.2 to delete the 3.25 limit on extension of surveillance intervals. The request is in response to the guidance provided in NRC Generic Letter 89-14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves the deletion of the 3.25 limit on extending surveillances. The frequency at which surveillances are performed is not assumed in the initiation of any analyzed event. The deletion of the 3.25 limitation recognizes that the most probable result of any particular surveillance being performed is the verification of conformance with Surveillance Requirements. Accident analysis assumptions reflected in these Surveillance Requirements will still be verified on a frequency sufficient to ensure that the assumptions are reliably maintained. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change, which involves the deletion of the 3.25 limit on surveillance extensions, does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Additionally, the surveillance interval will still be constrained by the 25 percent extension criteria of Specification 4.0.2. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. Does this change involve a significant reduction in a margin of safety?

Any potential reduction in a margin of safety has been evaluated and determined to be insignificant in NRC Generic Letter 89-14 since the most probable result of the performance of a surveillance is the verification of conformance with Surveillance Requirements and the use of the allowance to extend surveillance intervals by 25 percent results in a significant safety benefit when conditions are not suitable for performing the surveillance. In these cases, the safety benefit of allowing the use of the 25 percent extension outweighs any benefit derived by limiting three consecutive intervals to 3.25 limit. As such, any potential reduction in a margin of safety will be offset by the safety benefit gained by allowing the surveillance to be extended when conditions are not suitable for performing the surveillance and by not forcing the plant through a shutdown transient to perform refueling interval surveillances.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: April 18, 1991

Description of amendment request: The proposed amendment would change Technical Specification Section 1.10, the definition of E-bar - Average Disintegration Energy, for the purpose of determining a reactor coolant activity limit, deletes tritium as an isotope to be used in the calculation of E-bar.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The change to the definition of [E-bar] does not adversely affect the consequences of the design basis accidents. The proposed change will impose more restrictive limits on the reactor coolant activity. Tritium is not included in the accident dose calculations and need not be included because of its low dose conversion factors. As such, changing the definition of [E-bar] to exclude tritium makes it more consistent with the dose calculation assumptions and is more conservative in terms of potential accident dose calculations. Therefore, it is concluded that previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. Based on experience, the lower coolant activity limit will not result in an increased potential for plant shutdowns. For most fuel failures, the Dose Equivalent I-131 limit is much more restrictive than 68/ [E-bar]. For the debris induced fuel failures typical of Cycle 15 for stainless clad fuel, the 160 failed rod limit, based on Xenon-133 equivalent, will be more limiting than the 68/[E-bar] limit. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

The proposed change does not have any adverse impact on the protective boundaries. Since the proposed change also does not affect the consequences of any accident previously analyzed, there is no reduction in a margin to safety. The proposed change provides a greater measure of protection for the public.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: April 18, 1991

Description of amendment request: The proposed change revises the format of the Semisannual Radioactive Effuent Release Report from Regulatory Guide 1.21, Revision 0, Appendix A, to Regulatory Guide 1.21, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This change is to update the Specifications to a more recent reporting format. This change is administrative in nature and therefore no increase in the probability or consequences of an accident previously evaluated is incurred as a result of this change.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change is administrative in nature and therefore does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 -

Does not Involve a Significant Reduction in the Margin of Safety.

As this proposed change will revise the reporting requirements to a more recent revision to the Regulatory Guide and is therefore administrative in nature, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theordore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: April 11, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by changing those specifictions involving written reports submitted to the NRC in order to be consistent with 10 CFR 50.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed changes are purely administrative in that they remove an administrative inconsistency between GGNS TS and 10 CFR 50.4 where the Commission has clearly stated that Section 50.4 takes precedent over existing technical specifications. Therefore, the proposed change cannot increase the probability or consequences of an accident previously evaluated.

b. This change would not create the possibility of a new or different kind of accident from any previous analyzed.

The proposed changes are editorial in nature and have no impact on plant equipment or operation other than reporting certain events to the Commission. Therefore, the requested revisions will not create the possibility of a new or different accident from any previously analyzed.

c. This change would not involve a significant reduction in the margin of safety.

The margin of safety is not reduced since the proposed changes are administrative in nature and do not impact plant equipment. No change to plant equipment will occur due to this proposal. These changes are being proposed to comply with the requirements of Section 50.4 of 10 CFR 50.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: April 4, 1991

Description of amendment request: The proposed amendments would revise the Technical Specifications to reflect (a) the undervoltage relay setpoints for the Emergency Power System (EPS) Enhancement Project, (b) an additional fire zone, and (c) administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Regarding the changes to TS 3.3.2, Engineered Safety Features Actuation System Instrumentation,] [t]he...trip setpoint values ...[have] been [recalculated] to reflect plant changes recently finalized. Recalculation was necessary primarily because of the replacement of [motor operated valve (MOV)] motors...in response to [G]eneric Letter 89-10..., and the availability of final vendor data on some safety-related [heating ventilation air conditioning (HVAC)] equipment added during the dual unit outage. These plant modifications resulted in different voltage requirements for the [load centers]. The assumptions and calculational methodology used in the revised calculation...are consistent with those of the calculation performed to determine the existing setpoint values. Since the same undervoltage protection is afforded by the revised setpoint values, there is no significant increase in the probability or consequences of an accident previously evaluated.

[Regarding the changes to TS 3.3.3.4, Fire Detection Instrumentation,] [t]he additional fire zone added to Table 3.3-6 is consistent with the existing listed fire zones and provides assurance that the [s]pare [b]attery located in this fire zone will be appropriately monitored. [T]he [s]pare [b]attery [r]oom and the [e]lectrical [e]quipment [r]oom are both within one fire area labeled as G. Originally, this whole area (formerly the Auxiliary Building Machine Shop) was labeled as Fire Zone 25. Conversion of this room into the [e]lectrical [e]quipment [r]oom and [s]pare [b]attery [r]oom, as part of the EPS Enhancement Project, resulted in unique fire detection requirements for the equipment being monitored. In accordance with NUREG/CR-1798..., thermal detectors are to be used for detection in the battery rooms and ionization smoke detectors in the area containing the electrical equipment. Since different types of detection are appropriate for the [s]pare [b]attery [r]oom and the [e]lectrical [e]quipment [r]oom within the Fire Area G, unique fire zone identifiers have been assigned to each room for convenience. To ensure that failure of a single detector does not result in a total loss of detection in the fire zone, a minimum of two detectors are required for each area. Due to the geometry of the [e]lectrical [e]quipment [r]oom and the location of HVAC ducts, an additional smoke detector has been added in Fire Zone 25, in accordance with the National Fire Protection Association (NFPA) Standard 72E.... Therefore, the current listing of five smoke detectors in zone 25 have been updated to six.

The probability or consequences of an accident is not affected by [these] change[s]. The new fire zone identifier, 25A, and the revision of the number of smoke detectors in Fire Zone 25 do not affect the initiator of any accident evaluated in the F[inal] S[afety] A[nalysis] R[eport] nor the mitigation of any accident.

[Regarding the administrative change to TS 3.3.3.4,] [t]his change is editorial in nature, since the original plant configuration has not changed and this change has no impact on plant operating requirements or F[inal] S[afety] A[nalysis] R[eport] [FSAR] analyzed accidents. This change is proposed solely to ensure the consistency of the Technical Specifications with the actual plant

configuration and the associated Technical Specifications.

[Regarding the change to TS 3.5.2, ECCS Subsystems - Tavg Greater than or Equal to 350° F,] [t]his change is editorial in nature and has no impact on plant operating requirements or FSAR analyzed accidents. This change is proposed solely to enhance the consistency in the wording of ACTION statements in the Turkey Point Technical Specifications.

[Regarding the changes to TS 3/4.7.8.3, Fire Hose Stations,] [t]he addition of this new Hose Station...provides for the same OPERABILITY requirements as specified for the existing Fire Hose Stations. Note this hose station was added to Turkey Point's design per FPL's commitment. This additional requirement ensures that an appropriate level of protection is provided for the new Unit 4 EDG building, as compared to the existing Unit 3 EDG Building, for mitigating the consequences of a fire. Therefore, the probability of or consequences of losing an EDG due to a fire is not increased. This added Hose Station does not affect the initiator of any other accident evaluated in the FSAR and provides assurance that adequate fire protection is available for required plant equipment in the vicinity of the new Unit 4 EDG Building.

[For the changes to TS 4.8.1.1.2, AC Sources - Operating,] [t]he probability of occurrence of an accident previously evaluated in the FSAR has not been affected, since the surveillance testing of EDGs does not affect the probability of occurrence of accidents. The consequences of an accident previously evaluated in the FSAR are not affected by this change either. The revisions to this surveillance footnote are proposed to enhance consistency with the rest of Turkey Point's [EDG] surveillance requirements (e.g., 4.8.1.1.2.a.5...). The specification of load bands versus a single specific value is endorsed by the EDG vendors and the NRC. (The NRC has endorsed a similar change for both Carolina Power and Light Shearon Harris Unit 1 and Texas Utilities Comanche Peak Unit 1.) The specified bands provide the same EDG performance assurance as the existing criteria, but minimize the wear and tear on the EDG. The specified bands preclude testing the EDGs while excessively loaded.

[The changes to TS 3.8.3.1, Onsite Power Distribution Operation] are editorial in nature and have no impact on plant operating requirements or FSAR analyzed accidents. The addition of "(hours)" is provided for clarity. The specified Allowable Outage Times provided in these table[s] [are] in units of hours; however, this was not explicitly shown.

[Regarding the changes to TS 3.8.3.2, Onsite Power Distribution - Shutdown,] [t]he editorial change to the double asterisk footnote is proposed to enhance consistency within Turkey Point's Technical Specifications. The addition of the clarification phrase provides better understanding for the operator regarding the configuration and usage of a backup inverter.

The proposed change[s] [do] not result in any new plant operating requirements. No accident initiating events are affected. The change[s] [are] editorial and [do] not affect the probabilities of the occurrence of, or the consequences of, an accident.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident from any accident previously evaluated.

[For the change to TS 3.3.2,] [n]o new types of equipment are added by this change. The proposed change introduces no changes in operation or new modes of operation. The ability of the system to detect and appropriately respond to an off-normal undervoltage condition is maintained.

[For the change to TS 3.3.3.4,] [t]he additional fire zone...is consistent with the existing listed fire zones. The resulting number of detectors indicated provide adequate fire detection capability. No new types of fire detectors are being added to the plant. The proposed change introduces no changes in operation or new modes of operation.

[Regarding the administrative change to TS 3.3.3.4,] [t]his change is of an editorial nature, and has no effect on the possibility of accidents. The resulting number of detectors indicated provide adequate fire detection capability. No new types of fire detectors are being added to the plant. The proposed change introduces no change in operation or new modes of operation.

[The changes to TS 3.5.2 are] editorial in nature and [have] no effect on the possibility of accidents. The proposed change[s] [introduce] no changes in operation or new modes of operation.

[For TS 3/4.7.8.3,] [t]he Hose Station at the new Unit 4 EDG Building provides a similar degree of protection against fire-induced losses of an EDG as provided for the existing Unit 3 EDG Building. The new Hose Station will be maintained and operated in accordance with the existing fire protection program, and therefore, will not create the possibility of a new or different kind of accident. The proposed change introduces no changes in operation or new modes of operation.

[For TS 4.8.1.1.2,] [t]he revisions to the surveillance footnote are proposed to enhance consistency with the rest of Turkey Point's [EDG] surveillance requirements...and do not require any new types of testing. The proposed change introduces no basic changes in operation or new modes of operation.

[For TS 3.8.3.1,] [t]hese changes are editorial in nature and have no effect on the possibility of accidents. The proposed changes introduce no changes in operation or new modes of operation.

[For TS 3.8.3.2,] [t]he proposed change in the the footnote is basically editorial in nature and does not require any new types of testing. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant reduction in a margin of safety.

[For TS 3.3.2,] [t]he same criteria utilized in the calculation of the existing setpoints has been applied to the calculation of the revised setpoints. The purpose of the specified trip settings is to separate the busses from the offsite power and reenergize these same busses from the onsite power if an unacceptable voltage drop should occur on the offsite power system. The margin of safety provided by the new values is commensurate with the existing values since they were calculated in a similar manner.

[For TS 3.3.3.4,] [t]he margin of safety remains unchanged since the additional fire zone does not affect the level of detection and warning currently provided by the existing Technical Specification requirements. The resulting number of detectors indicated are consistent with the industry standards, i.e., NFPA and NUREG/CR-1798, for providing adequate fire detection capability; thus the margin of safety is maintained.

[For the administrative change to TS 3.3.3.4,] [t]he resulting number of detectors are consistent with the industry standards, i.e., NFPA and NUREG/CR-1798, for providing adequate fire detection capability; thus the margin of safety is maintained.

[For TS 3.5.2,] [t]his change is editorial in nature and has no effect on the margin of safety.

[For TS 3/4.7.8.3,] [t]he new Unit 4 EDG Building Hose Station will assure that the safety-related equipment in this new building is provided with the same level of protection as the safety-related equipment in the existing Unit 3 EDG Building. Thus, the margin of safety is not reduced.

[For TS 4.8.1.1.2,] [t]he surveillance footnote has been revised to enhance consistency with the requirements of the other EDG surveillances at Turkey Point. The revised footnote provides a commensurate level of confidence that the EDGs will perform as designed.

[For TS 3.8.3.1,] [t]hese changes are editorial in nature and have no effect on the margin of safety.

[For TS 3.8.3.2,] [t]he change only enhances the Technical Specifications by providing better consistency and providing more understandable footnotes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County,Georgia

Date of amendment request: November 28, 1990

Description of amendment request: Technical Specification (TS) 3.4.6.1 for the Reactor Coolant System Leakage Detection Systems does not specify actions to be taken if less than two of the required leakage detection systems are operable. The proposed amendments would supplement TS 3.4.6.1 to require for this condition that the plant be placed in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. If less than two leakage detection systems are operable, the proposed amendment would require placing the plant in Hot Standby within six hours and Cold Shutdown within the following 30 hours. The provisions of TS 3.0.3 would require action within one hour to place the plant in Hot Standby within the next 6 hours, Hot Shutdown within the following 6 hours, and Cold Shutdown within the subsequent 24 hours. The net effect on plant operation is the same under either requirement. Therefore, there is no effect on the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the net effect on plant operation is the same under the proposed amendment or under TS 3.0.3. They both require a shutdown in essentially the same time frame. Therefore, there is no potential for a new or different kind of accident.

The proposed change does not involve a significant reduction in a margin of safety. The existing margin of safety is maintained in that a plant shutdown will continue to be required in the event that less than two leakage detection systems are operable.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 29, 1990; as supplemented January 29, March 6, 27, and 29, and April 19, 1991.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 3/4.1.2.5, 3/4.1.2.6, and 3/4.5.4 by reducing the minimum solution temperature inside the refueling water storage tank (RWST). Specifically, the minimum solution temperature for the limiting condition for operation would be reduced from 54 to 44 degrees F. The associated surveillance limit, which establishes a minimum outside air temperature at which the tank solution temperature must be verified daily, would be reduced from 50 to 40 degrees F. Additionally, "(break flow equal to or greater than 3.0 square feet)" would be deleted in Bases 3/4.5.4, Refueling Water Storage Tank, which states that limits on RWST minimum volume and boron concentration ensure that... 3) the reactor will remain subcritical in the cold condition following a large break LOCA (break flow equal to or greater than 3.0 square feet) assuming complete mixing of the RWST, RCS, ECCS water and other sources of water that may eventually reside in the sump, post-LOCA with all control rods assumed to be out."

Other changes in the licensee's application and supplements have been previously noticed and are outside the scope of this notice. These other changes include those associated with the planned future use of Westinghouse VANTAGE-5 fuel.

Basis for proposed no significant hazards consideration determination:

The proposed TS changes would provide additional operating flexibility by increasing the range of temperature within which the RWST will be available as an operable borated water source. The licensee has had Westinghouse reanalyze those safety analyses in the Final Safety Analysis Report (FSAR) which are sensitive to minimum RWST solution temperature as part of the VANTAGE-5 fuel transition study. These analyses include Inadvertent Operation of the Emergency Core Cooling System (ECCS) During Power Operation, Small Break Loss of Coolant Accident (LOCA), and Steam Generator Tube Failure. The licensee also reconfirmed the solubility of the RWST solution at the reduced temperature for the required range of boron concentration as part of the VANTAGE-5 program.

The change to the Bases to delete "(break flow equal to or greater than 3.0 square feet)" is a correction to the TSs. The phrase erroneously implies that a large break LOCA is defined as being greater than 3 square feet, whereas it is actually defined as larger than 1.0 square foot. This error is only in the text and did not affect the associated analyses. Since the correct values are given in the FSAR, the licensee prefers deletion rather than substitution of the correct value.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The reduced RWST minimum solution temperature does not increase the probability or consequences of an accident previously evaluated in the FSAR. The RWST solution temperature is a parameter used in the analysis of the Steam Generator Tube Failure and Small Break LOCA accidents. Since RWST solution temperature is only used in the analysis of these events, it does not contribute as an initiator or affect the probability of occurrence. The Inadvertent Operation of the ECCS During Power Operation accident involves injection of borated RWST water into the RCS. Although RWST injection is part of the event, the initiator of the event is either operator error or a false electrical actuation signal, which are unaffected by RWST solution temperature. Therefore, a change in the RWST minimum solution temperature will not increase the probability of occurrence of this event.

The consequences of an accident previously evaluated in the FSAR are not increased due to the reduced RWST minimum solution temperature. Small Break LOCA and Inadvertent Operation of the ECCS During Power Operation are not evaluated for radiological consequences since they are not limiting transients with respect to prediction of offsite doses. A revised analysis has been performed for the Steam Generator Tube Failure event as part of the VANTAGE-5 submittal which documents that all doses are within the Standard Review Plan acceptance criteria. Therefore, the consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

The reduced RWST minimum solution temperature does not create the possibility of a new or different kind of accident than those already evaluated in the FSAR. No new accident scenarios, failure mechanisms or

limiting single failures associated with the RWST are introduced as a result of the reduced allowable solution temperature. This reduced temperature condition in the RWST has no adverse effect and does not challenge the performance or integrity of any other safety related system. Therefore, the possibility of a new or different kind of accident is not created.

The margin of safety provided by the Technical Specifications relative to the RWST as a borated water source ensures that the reactor will remain subcritical under post-accident conditions. This inherently assumes that the defined boron concentration range will remain soluble at the RWST minimum solution temperature. By confirming that solubility at the reduced temperature is maintained, it is concluded that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis. Therefore, the margin of safety provided by the RWST as a source of borated water is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: April 16, 1991

Description of amendment request: The proposed amendment would change Technical Specification Requirement 4.3.8.2.a "Turbine Overspeed Protection System" by reducing the testing frequency of the high pressure turbine control valves from once every 7 days to once every 31 days. The change in the testing interval is recommended by the turbine vendor based on accumulated operating experience and a change in the basis for calculating turbine missile generation probability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change would not increase the probability or the consequences of a previously evaluated accident because:

The General Electric (GE) probabilistic analysis for the River Bend Station turbine has demonstrated that the probability of missile generation in the turbine is 5.0×10^{-6} if the rotor is inspected every six years. This is well within the acceptable limit of 10^{-4} as recommended by Regulatory Guide (RG) 1.115. The GE analysis has been previously reviewed and results approved by the NRC in a letter dated August 26, 1987. Also, the probability of damage to safety related systems resulting from a missile is 5×10^{-9} compared to the recommended limit of 1×10^{-7} specified in RG 1.115. The probability of missile generation, and hence damage, is increased only a negligible amount by increasing the testing interval because turbine steam inlet valve reliability is no longer the major contributing factor in determining hypothetical missiles based on past in-service experience.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

The change does not involve a modification to any systems or components and does not alter the surveillance procedures. Therefore, the possibility of a new or different kind of accident will not result. Additionally, an increase in the test interval will decrease the probability of upsetting plant stability during testing and will decrease the number of times the turbine steam load is unbalanced.

3.The proposed change would not involve a significant reduction in the margin of safety because:

The General Electric Service Information Letter Number 413 confirms the excellent reliability of turbine control valves and recommends a 31-day surveillance frequency. This has been reviewed and approved by the NRC for inclusion in the Technical Specifications for all recently licensed BWRs. Past operating experience and testing provide adequate assurance that the high-pressure turbine control valves will function. The monthly surveillance will ensure operability of the turbine control valves and will reduce mechanical wear to the valves. Therefore, a reduction in the margin of safety does not occur as a result to the change.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: George F. Dick, Jr., Acting Director

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 23, 1991

Description of amendment request: The proposed changes to the Cooper Nuclear Station Technical Specifications include: 1) revision of Section 5.2.B to allow the use of NRC approved neutron absorber material in BWR control rods, 2) revision of Section 6.5.1.D to more closely follow the guidance of Standard Technical Specifications regarding submittal of the monthly operating report, and 3) administrative changes to Section 5.3, 5.4.A, and 5.4.B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

EVALUATION

(a) The proposed change allows the use of the neutron absorbing material that has been specifically approved for use by the NRC in BWR control rods. Use of these materials will not significantly alter the neutron absorption, mechanical, or other functional characteristics of a control rod. The proposed change does not change the required number of control rods nor does it affect existing Limiting Conditions of Operation for minimum shutdown margin for the core, coupling of a control rod with its drive mechanism to address the Control Rod Drop Accident and the control rod average and four rod scram time requirements. The acceptability of utilizing the control rod materials and design will be verified following nuclear industry standards in the reload and licensing analyses. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(b) The proposed change revises the schedule and the manner of submittal of the monthly operating report. This change is administrative in nature and does not affect any plant operation, hardware, or analysis. It does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

(c) The proposed change to reference the USAR for the design of the reactor vessel, primary containment, and secondary containment is administration in nature. This change does not affect any plant operation, equipment, or analysis, and therefore does not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

EVALUATION

(a) The use of NRC approved neutron absorber material in the control rods will not create any new mode of plant operation or alter the control rods in such a way as to affect their function or continued operability. The proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

(b) The change to the schedule and manner of submittal of the monthly operating report is administrative in nature and will not cause any new mode of plant operation or change to the facility. This change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

(c) The proposed change to reference the USAR for the design of the reactor vessel, primary containment, and secondary containment is administrative in nature. This change does not affect any plant operation, equipment, or analysis, and therefore does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

EVALUATION

(a) The proposed change allows the use of neutron absorbing material that has been specifically approved by the NRC for use in BWR control rods. It does not change the required number of existing control rods. It does not affect existing Technical Specification requirements regarding minimum core shutdown margin, coupling of control rods to their drive mechanism and scram times for average rod and four-rod grouping. Margins of safety will be verified using approved methodologies and criteria in the reload and licensing analysis. The proposed change will not involve a significant reduction in the margin of safety.

(b) The change to the schedule and manner of submittal of the monthly operating report is administrative in nature and does not affect plant operation, equipment, setpoints or analysis and will not involve a significant reduction in the margin of safety.

(c) The proposed change to reference the USAR for the design of the reactor vessel, primary containment, and secondary containment is administrative in nature. This change does not affect any plant operation, equipment, or analysis, and therefore does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 25, 1991

Description of amendment request: The proposed amendment would reduce the low reactor water level scram setpoint (Level 3) from greater than or equal to 12.5" to greater than or equal to 4.5" above instrument zero (greater than or equal to 176.69" to greater than or equal to 168.69" above the top of the active fuel). The amendment also would make administrative changes involving editorial and typographical corrections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Level 3 instrument setpoint in Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Attachment 2 evaluation demonstrates that the consequences of operational transients, loss of coolant accident (LOCA) events, and anticipated transient without scram (ATWS) events remain within the acceptance criteria of the licensing basis. The functions of the primary and secondary containment isolation valves are not affected by the proposed Level 3 setpoint change. The proposed setpoint reduces the probability of inadvertent reactor scrams on low reactor water level. The possibility of unnecessary activations of PCIS Groups 2, 3 and 6 isolations during low power level manual scrams as a part of normal plant shutdowns, which could divert operator attention from the shutdown, is also reduced.

Thus, there is no significant increase in the probability of an accident previously evaluated as a result of the change to the setpoint in Technical Specifications.

The miscellaneous administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since they do not affect plant operations, equipment, or any safety related activity. Thus, these administrative changes cannot affect the probability or consequences of any accident.

2. The proposed change to the Level 3 setpoint in Technical Specifications does not create the possibility for a new or different kind of accident from any accident previously evaluated. As discussed in the Attachment 2 evaluation, the proposed change in the Level 3 setpoint in Technical Specifications does not introduce any hardware change, and the performance of the Level 3 initiated trips is not affected. The Level 3 trip will still fulfill its design basis objective of initiating a scram and the isolation of the primary containment on low reactor water level such that the licensing safety limits are maintained. No new modes of operation are created for any engineered safety feature or safety system. The potential for operator error is reduced by preventing unnecessary isolations during low power normal plant shutdowns, which may divert operator attention from the evolution. Therefore, the proposed Technical Specifications change does not create the possibility of any new accident or malfunction.

The miscellaneous administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated since these changes are purely administrative and do not affect the plant operation or design. Therefore, these administrative changes cannot create the possibility of any accident.

3. The proposed change to the Level 3 setpoint in Technical Specifications does not create a significant reduction in the margin of safety. The Attachment 2 evaluation demonstrates that the results of the transient and accident analysis are within the required acceptance criteria and that all licensing safety limits are avoided. Therefore, the proposed change does not create a significant reduction in the margin of safety.

The miscellaneous administrative changes do not create a significant reduction in the margin of safety since these changes do not affect any safety related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information and correcting errors. Thus, these changes cannot reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 59-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: March 18, 1991, as supplemented by letter dated May 3, 1991 (Reference LAR 91-01)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to delete the requirement to verify that the containment fan cooler unit (CFCU) dampers transfer from the normal to the accident position. Specifically, Surveillance Requirement 4.6.2.3.a.(3) of TS 3/4.6.2.3, "Containment Cooling System," would be modified to delete the requirement to verify that the containment fan cooler unit (CFCU) dampers transfer to the accident position. The requirement to verify damper position will not be necessary after a planned CFCU modification is made because the dampers will be secured in their accident position. The CFCU modification will be made during the 5th refueling outage for Unit 1 and the 4th refueling outage for Unit 2. Therefore, the revised TS 4.6.3.2.a.(3) would be made applicable starting with Unit 1 Cycle 6 and Unit 2 Cycle 5.

PG&E plans to simplify the design and operation of the CFCUs, in accordance with the provisions of 10 CFR 50.59, by eliminating the HEPA filters and moisture separators from each CFCU and adjusting the variable inlet vanes to the fan in order to maintain the design air flow rate. The assumptions used to calculate off-site doses resulting from controlled post-accident containment venting carried out when the wind is blowing onshore are described in Table 15.5-28 of the FSAR Update, and do not take credit for the HEPA filters or moisture separators in the accident analyses. In addition, the deletion of the HEPA filters and moisture separators from the CFCUs has been evaluated by Westinghouse, based on the assumption that modifications to the CFCUs will be made so the heat removal capability of the CFCUs and the heat load to the containment cooling water system would not be affected.

Upon removal of the HEPA filters and moisture separators, the CFCU normal and accident mode dampers would be permanently secured in positions such that normal and accident mode operations could be performed without changing damper positions. The CFCU airflow rate for both normal and accident operation after the proposed changes will be in accordance with design airflow rates. All controls associated with the CFCU dampers would also be removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee, in its submittal of March 18, 1991, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed modifications to the accident inlet and outlet dampers of the CFCUs simplify the system design and operation by reducing the number of components required to function during testing and standard operation. By simplifying the damper configuration, the probability of having a damper failure is reduced. In addition, the proposed change will not adversely affect the CFCU's function of heat removal and therefore not affect analyzed accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Securing the dampers will have no affect on the ability of the CFCUs to perform their intended function during normal or accident conditions. In addition, the CFCUs will function the same following the proposed changes. Hence, no new failure mechanisms will be introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

Securing the CFCU dampers would not degrade the ability of the CFCUs to perform their heat removal function, as the normal and accident operation flow rates would be met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: March 27, 1991 (Reference LAR 91-03)

Description of amendment request: The proposed amendments revise Technical Specification (TS) 3/4.4.4, "Relief Valves," TS 3/4.4.9.3, "Overpressure Protection Systems," and their associated Bases. The changes address the recommendations of Generic Letter 90-06 with some differences.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change of maintaining power to closed block valves could potentially increase the probability of an inadvertent opening of the block valve, and the proposed change of operating the block valve through one complete cycle of full travel to demonstrate operability when the block valve is closed due to excessive seat leakage of a PORV could potentially increase the probability of inadvertent RCS leakage. The safety impact is, however, not significant since the proposed changes are only applicable if the PORV is inoperable due to excessive seat leakage. If the block valve were inadvertently opened or opened for testing, only leakage would occur, and the RCS would not undergo a rapid depressurization.

The PORVs are used by operators for recovery from postulated accidents such as an SGTR. Automatic actuation of the PORVs is needed for LTOP of the RCS. The proposed changes to the TS increase the availability of the PORVs for these functions. Therefore, there would be no increase in consequences as a result of the proposed TS changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The requested license amendment would not involve any physical changes to the plant and, in particular, the PORVs and block valves.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The primary purpose of the proposed TS changes is to increase the availability and reliability of the PORVs. The proposed TS changes do not involve any changes to actuation setpoints of the PORVs or LTOP system. There is no impact of the proposed changes on any safety analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 15, 1991

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications incorporates a reference to the NRC-approved FitzPatrick Inservice Inspection (ISI) program into the Technical Specifications.

This change adds the following statement to Section 4.6.F.3: An Inservice Inspection Program for piping identified in the NRC Generic Letter 88-01 shall be implemented in accordance with NRC staff positions on schedules, methods, personnel, and sample expansion included in this Generic Letter, or in accordance with alternate measures approved by the NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated. This proposed change is purely administrative in nature, since it simply incorporates a reference to the existing ISI program into the Technical Specifications. The existing FitzPatrick ISI program has been extensively reviewed and approved by the NRC staff. This change does not involve a modification of any structures, systems, or components; nor does it alter any plant operating procedure or the ISI program.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely administrative in nature, since it simply incorporates a reference to the existing ISI program into the Technical Specifications. This change does not involve a modification to any structures, systems, or components. Since the existing ISI program requires no hardware changes, the introduction of new failure modes will not occur. Therefore, this proposed change will not create any new or different kind of accident from those previously evaluated.

3. involve a significant reduction in the margin of safety. The proposed change is purely administrative in nature, since it simply incorporates a reference to the existing ISI program into the Technical Specifications. The existing FitzPatrick ISI program ensures that surveillance is performed on piping susceptible to IGSCC in a manner that increases the probability of detecting any defects or flaws. This change does not involve a modification of any structures, systems, or components; nor does it alter any plant operating procedures or the ISI program.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 19, 1991

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications incorporates two new sections, 3.11.F and 4.11.F, and their associated Bases. These new specifications contain operability requirements for ventilation and air conditioning (HVAC) equipment associated with four environmental enclosures. These enclosures are installed around two safety-related 600 VAC electrical load centers and the two LPCI independent power supply charger/inverters within the reactor building.

The load centers and charger/inverters are required to be operable under post-accident conditions. This equipment is not qualified to withstand the local post-accident environment. Therefore, enclosures around this equipment were installed to maintain a controlled atmosphere to protect the equipment from postulated harsh environments.

The proposed technical specifications ensure the operability of the equipment inside the enclosures under post-accident conditions by imposing operability, testing, and action statement requirements on the enclosures' HVAC equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92 since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed technical specifications add operability and surveillance requirements to ventilation and air conditioning equipment associated with four environmental enclosures within the reactor building. These structures ensure the availability of the enclosed safety-related electrical equipment under postulated accident conditions. No accidents as analyzed in the FSAR [Final Safety Analysis Report] are affected by these changes.

2. create the possibility of a new or different kind of accident from any accident previously evaluated. The enclosures and their associated HVAC units can not initiate any type of reactor transient. No postulated failure mode or combination of failures of the HVAC systems can initiate an accident.

3. involve a significant reduction in a margin of safety. The proposed changes maintain all existing margins of safety by ensuring the availability of safety-related equipment under accident conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: March 28, 1991

Description of amendment request: The licensee requests an amendment to the Technical Specification to include smoke detectors and hose stations which are to be provided in a new building being constructed to house the intake structure. Miscellaneous changes and corrections are also being made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed changes do not involve an increase in the probability of a previously-analyzed accident. The proposed changes add smoke detectors and hose stations for the intake structure building to the lists of equipment required to be operable by Tables 3.14-1 and 3.14-2. Tables 3.14-1 and 3.14-2 provide operability requirements for smoke detectors and hose stations in areas that contain safe shutdown equipment. The intake structure area includes safe shutdown equipment (the service water pumps), so the smoke detectors and hose stations protecting the service water pumps need to be included in Tables 3.14-1 and 3.14-2. The fire protection measures for the enclosed intake structure were found acceptable by the NRC staff. (See Fire Protection SER supplement dated May 2, 1980.)

The miscellaneous changes do not affect plant operation.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident. The smoke detectors and hose stations provide protection against a fire for equipment used for safe shutdown of the plant. This level of protection has been previously approved by the NRC staff.

The miscellaneous changes do not affect plant operation.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. The amendment provides control for new smoke detectors and hose stations in the newly enclosed intake structure. These tech. spec. [technical specifications] changes are necessary because the intake structure area includes equipment used for safe shutdown of the plant (the service water pumps).

The miscellaneous changes do not affect plant operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: November 13, 1990

Description of amendment request: The proposed amendment would delete the Technical Specification (TS) surveillance requirement to perform a weekly stroke test of the high pressure turbine control valves and would add editorial changes with respect to valve nomenclature to provide consistency throughout the TS. The TS surveillance requirements for the monthly stroke test of the high pressure turbine control valves would remain unchanged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The Seabrook Station Probabilistic Safety Assessment (SSPSA) estimates the frequency of turbine missile generation and its consequences. This conservative analysis demonstrates that the risk to public health and safety from turbine missiles is negligible. The SSPSA turbine missile generation estimates are based on contribution by overspeed failures versus failures at operating speed. Given that the generation of turbine missiles is not very sensitive to changes in control system reliability, the extension of the testing frequency for the high pressure turbine control valves will not cause a significant increase in the probability of core damage or radiological consequences from turbine missiles. Also, the in-series stop valves which are tested on a weekly basis provide additional overspeed protection. Redundant isolation capabilities to prevent turbine overspeed are also provided by the main steam isolation valves. Extending the frequency of testing the high pressure turbine control valves reduces the number of power reductions required to perform this testing and reduces the risk of inadvertent turbine trip (and reactor trip) caused by such testing.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The analyses presented in FSAR Section 15.1 and 15.2 bound the two possible failure mechanisms which exist for the high pressure turbine control valves (i.e., the possibility of a control valve not closing in conjunction with a stop valve not closing, or spurious control valve closure). The extension of the testing frequency from weekly to monthly does not create a new failure mechanism; therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety. Margin of safety as it relates to the protection of safety-related structures, systems and components from turbine missiles is measured in terms of the probability of radiological consequences exceeding 10 CFR 100 limits. FSAR Section 3.5.1.3 specifies the acceptance criteria and analytical results for the probability that a turbine missile is generated and strikes a safety related area which may lead to consequences exceeding 10 CFR 100 limits. Additionally, the Seabrook Station Probabilistic Safety Assessment (SSPSA) quantifies turbine missile damage frequencies for several common cause initiating events. The SSPSA analysis demonstrates that the probability of core damage from turbine missiles provides negligible contribution to public risk. The SSPSA turbine missile generation estimates are based on statistical and analytical data which show a relatively small contribution by overspeed failures versus failures at operating speed, therefore, damage frequencies would be further reduced if only turbine missiles generated as a result of overspeed were considered. Given that the generation of turbine missiles is not very sensitive to changes in control system reliability, the extension of the testing frequency for the high pressure turbine control valves does not significantly increase turbine missile damage frequencies and therefore does not result in a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110

NRC Project Director: Richard H. Wessman

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: December 14, 1990 as supplemented on April 24, 1991.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to permit a Safety Injection (SI) pump to be made operable in operating MODES 5 and 6 provided that a Reactor Coolant System (RCS) vent area of at least 18 square inches is first established. Editorial changes to the TS format are proposed to renumber the statements after incorporating the new requirements. In addition, flexibility is proposed to establish the vent with some device other than a valve, if desired.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

New Hampshire Yankee has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92, and based upon the information provided in the revised Technical Specifications and above has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The only accident potentially affected by the proposed change to allow operation of an SI pump when the RCS has a vent area equal to or greater than 18 square inches is the low temperature overpressurization mass addition transient. The probability of this event is not affected since the operable Safety Injection (SI) pump would only be made OPERABLE after the suitable vent area in the Reactor Coolant System pressure boundary had been established. The creation of this vent area is similar to the existing requirement in Technical Specification 3.4.9.3.c to provide an RCS vent of at least 1.58 square inches in the event that neither of the COMS alternate relief valve configurations is available. The maximum possible flow rate into the Reactor Coolant System (RCS) during the mass addition transient will be increased, however this does not increase the consequences of this type of accident. The consequences of such an event would be mitigated by ensuring that a suitable vent area in the RCS pressure boundary exists prior to making an SI pump OPERABLE. This vent area will prevent any transient induced pressure increase from exceeding the 10 CFR 50 Appendix G pressure limit. The inclusion of the surveillance requirement in Technical Specification 3.4.9.3.3 ensures that the RCS vent area is maintained. Additionally, by providing an additional source of reactor vessel inventory, the proposed change reduces the consequences of a malfunction of the Residual Heat Removal (RHR) system.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Allowing a SI pump to be operable in these modes creates the possibility of a more severe mass addition transient than those within the capability of the Cold Overpressure Mitigation System (COMS). However, the proposed requirement to provide an RCS vent area equal to or greater than 18 square inches prior to making the SI pump OPERABLE provides overpressure protection for the Appendix G limit. This prerequisite to provide the RCS vent area prior to allowing one (1) SI pump to be OPERABLE is similar to the existing requirement in Technical Specification 3.4.9.3c to provide an RCS vent of at least 1.58 square inches in the event that neither of the COMS alternate relief valve configurations is available. The opening of a small vent in the RCS pressure boundary to provide overpressure protection is not a new or different approach than that currently used for low temperature overpressure protection and therefore does not create the possibility of a new or different type of accident than any previously evaluated.

3. Involve a significant reduction in a margin of safety. The proposed changes would allow one SI pump to be made OPERABLE in MODE 5 and MODE 6 creates the possibility of a mass addition transient more severe than those considered in the COMS design basis. However, the requirement to provide a suitably sized RCS vent area prior to making the SI pump OPERABLE will ensure that no violation of Appendix G limits will occur for such an event and no reduction of margin of safety for overpressure protection can occur. The utilization of the RCS vent area equal to or greater than 18 square inches provides protection of the reactor vessel Appendix G limit independent of the COMS system. Therefore, the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and adds the following comments. The editorial changes to the TS to renumber the statements have no bearing on any accident scenario or margin of safety and, therefore, no significant hazards consideration is involved. The proposal to possibly use a device other than a valve to establish a vent pathway does not involve a significant hazards consideration because the accident scenario, probability, consequences, and margin of safety depend on RCS pressure and coolant inventory, and the nature of the device used to provide the vent area does not change this. Any vent device is subject to the same requirements and TS as a valve used for that purpose. Based on the staff's review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110

NRC Project Director: Richard H. Wessman

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: January 24, 1991

Description of amendment request: The amendment would add a definition of a Digital Channel Operational Test to Section 1 of the Technical Specifications and revise certain notes to Technical Specification Tables 4.3-5 and 4.3-6 to clarify the requirements and provide consistency with the proposed definition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a clarification of existing requirements. No change to any system, structure, or component is involved, nor are the criteria for determining the OPERABILITY of any component or system revised. The affected radiation monitors will continue to perform at the same functional level as currently required, with the same OPERABILITY requirements and allowed outage times. The proposed change does not affect the functional requirements of the affected systems. With these requirements unchanged, the potential doses to personnel onsite and members of the public are not increased.

2. Create the possibility of a new or different kind of accident from previously

evaluated. The proposed change clarifies testing requirements for existing plant equipment. This change does not alter the function of this equipment or create a new failure mode for this equipment. No changes to any plant equipment or operating procedures are involved.

3. Involve a significant reduction in a margin of safety. The proposed change adds a Technical Specification Definition of Digital Channel Operational Test (DCOT) and revises three notes in two Technical Specification Tables to clarify the intent of the Technical Specifications. The change does not affect the current method of performing the required surveillance testing. The proposed change does not affect the functional requirements of the affected systems. The affected radiation monitors will continue to perform at the same functional level as currently required, with the same OPERABILITY requirements and allowed outage times. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Richard H. Wessman

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: March 18, 1991

Description of amendment request: The proposed amendment would involve an increase in the maximum enrichment of reload fuel assemblies authorized by Technical Specification 5.3.1 (Fuel Assemblies) to 5.0 weight percent Uranium-235 from the current 3.5 weight percent Uranium-235, and the addition of two new Technical Specifications 3/4.9.13 (Spent Fuel Assembly Storage) and 3/4.9.14 (New Fuel Assembly Storage) and their associated bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes utilizing the criteria specified in 10 CFR 50.92 and has determined that the proposed changes do not involve a Significant Hazards Consideration pursuant thereto as discussed below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. There is no increase in the probability of a fuel assembly drop accident in the Spent Fuel Pool since the mass of the fuel assembly does not increase when the fuel enrichment is increased. There is not a significant increase in the consequences of a fuel assembly drop accident in the Spent Fuel Pool since the fission product inventories in the fuel assemblies do not change significantly due to an increase in the fuel enrichment. The existing FSAR analyses for the fuel assembly drop accident indicate that radiological consequences are well within 10 CFR 100 limits. This conclusion remains valid at the increased fuel assembly enrichment. There is no increase in the probability or consequences of misplacing fuel assemblies in the Spent Fuel Pool because fuel assembly placement will be procedurally controlled and surveilled pursuant to the proposed Technical Specifications and criticality analyses demonstrate that the pool will remain subcritical assuming misplacement does occur. There is no increase in the probability or consequences of introducing optimum moderation conditions in the New Fuel Storage Vault as a result of an increase in fuel enrichment. These analyses demonstrate that the New Fuel Storage Vault remains subcritical under these modification conditions.

2. The proposed changes do not create the possibility of a new or different kind of accident than previously evaluated. Spent fuel handling accidents are not new or different types of accidents in that they are already analyzed in the FSAR. Criticality accidents in the New Fuel Storage Vault or Spent Fuel Pool are not new or different types of accidents in that they are already analyzed in the FSAR for fuel enrichments up to 3.5 weight percent Uranium-235. Additional criticality analyses have been performed for fuel enrichments up to 5.0 weight percent Uranium-235.

3. The proposed changes do not involve a significant reduction in a margin of safety. Criticality analyses have been performed which demonstrate that the New Fuel Storage Vault will remain subcritical under a range of moderation conditions from fully flooded to optimum moderation. Criticality analyses have been performed which demonstrate that the Spent Fuel Pool will be at least five percent subcritical under a fuel assembly misplacement accident with soluble boron (2000 parts per million) present in the pool and will remain subcritical with no soluble boron present.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Richard H. Wessman

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: Two letters both dated April 3, 1991

Description of amendment request: For Salem Units 1 and 2 the requested change would modify Surveillance 4.10.2.2 to provide more specific cross references to the required surveillances and clarify the requirements.

For Salem Unit 2, the requested changes are as follows:

1. This proposed change will correct a typographical error in Table 3.2-1. The DNB parameter for pressurizer pressure is maintained at greater than or equal to 2220 psia, not less than 2220 psia.

2. Action Statement 24 of Table 3.3-6 for an inoperable Radiation Monitoring System channel incorrectly refers to Specification 3.4.6.1, Steam Generators. The reference is being corrected to refer to Specification 3.4.7.1, Reactor Coolant System Leak Detection.

3. Currently, there are two surveillances numbered 4.4.7.2. These surveillances are being renumbered to 4.4.7.2.1 and 4.4.7.2.2 for clarity.

4. Table 3.4-1 describes the function of the SJ144 valves as Safety Injection (H.P. from SI Pumps to Hot Legs). These valves are in the lines to the Cold Legs, and should be described as Safety Injection (H.P. from SI Pumps to Cold Legs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. Involve a significant increase in the possibility or consequences of an accident previously analyzed.

1. For Salem Units 1 and 2, the proposed changes to surveillance requirement 4.10.2.2 will provide more specific cross references to the required surveillances. The proposed rewording of the specification will eliminate redundancy and improve consistency. These changes are administrative and not technical in nature. Therefore, these

changes would not increase the probability or consequences of a previously analyzed accident.

2. For Salem Unit 2:

a. The proposed change to correct a typographical error for Table 3.2-1, Pressurizer Pressure DNB parameter is administrative only. There is no technical change. Therefore, this change would not increase the probability or consequences of a previously analyzed accident.

b. Correction of the typographical error so that the action statement references the correct action assures that proper actions will be taken. This change does not increase the probability or consequences of a previously analyzed accident.

c. Renumbering of a specification is purely an administrative change which allows easier procedural references. As such, the proposed change will not increase the probability or consequences of a previously analyzed accident.

d. The proposed change corrects an improper component functional description for the component and is therefore an administrative change. As such, the proposed change will not increase the probability or consequences of a previously analyzed accident.

B. Create the possibility of a new or different kind of accident. As demonstrated above, all of the proposed changes are administrative and would not create the possibility for a new or different type of accident.

C. As demonstrated above, all of the proposed changes are administrative and do not change Technical Specifications in a way that would reduce any margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would delete the reference to the Deaerator Storage Tanks (DSTs) as condensate storage facilities for the Auxiliary Feedwater System and would revise the nomenclature for "condensate storage tank" and "condensate storage facilities" to "condensate storage tanks."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the DBNPS, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident conditions and assumptions are affected. Revising TS 3.7.1.3 to delete the DST as a source of condensate does not increase the probability of an accident since there are no changes to any plant system, equipment or procedure. The accident analysis assumes a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses. The changes to Surveillance Requirement (SR) 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions and assumptions are affected. Revising TS 3.7.1.3 to delete the DST as a source of condensate does not affect the consequences of an accident since the accident analysis assumes a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from the CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

2a. Not create the possibility of a new kind of accident from accident previously evaluated because no accident conditions and assumptions are affected. Revising TS 3.7.1.3 to delete the DST as a source of condensate does not create the possibility of a new kind of accident since there are no changes to any plant system, equipment or procedure. The accident analysis assumes only that a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from the CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses, and deletion of this potential source from the TS does not create any new type of accident. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no accident conditions and assumptions are affected. Revising Ts 4.7.1.3 to delete the DST as a source of condensate does not create the possibility of a different kind of accident since there are no changes to any plant system, equipment or procedure. The accident analysis assumes only that a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from the CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses, and deletion of this potential source from the TS does not create any new type or accident. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

3. Not involve a significant reduction in a margin of safety because the condensate volume requirements to meet analysis assumptions are not changed. Revising TS 3.7.1.3 to delete the Deaerator Storage Tank as a source of condensate only provides for a change in the cited source of condensate; however, it should be noted that the deaerator storage tank has never been considered in meeting the TS 3.7.1.3 volume requirements. The margin of safety has not been reduced because at least 250,000 gallons of condensate remain required by the TS. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only and do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 1, 1991

Description of amendment request: The proposed amendment would revise TS 3/4.6.1.2, to increase the allowed Secondary Containment bypass leakage

rate from 0.015 La to 0.03 La; relocate the list of containment bypass leakage paths (Table 3.6-1) from the TS's to the Updated Safety Analysis Report (USAR), and delete Surveillance Requirements (SR) leakage tests for bypass of containment penetrations and containment isolation valves which are not incorporated in the DBNPS design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit 1 in accordance with these changes would:

1a) Not involve a significant increase in the probability of an accident previously evaluated because there are no design modifications or hardware changes proposed.

1b) Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not increase the consequence above those previously analyzed and found acceptable by the NRC in NUREG-0136, Supplement 1.

2a) Not create the possibility of a new kind of accident from any accident previously evaluated because there are no design modifications or hardware changes proposed.

2b) Not create the possibility of a different kind of accident form any accident previously evaluated because there are no design modifications or hardware changes proposed.

3a) Not involve a significant reduction in a margin of safety as defined in the Basis for any Technical Specification since the TS will continue to limit the allowed secondary containment bypass leakage rate and maintain appropriate surveillance requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 1, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 4.7.7 and TS Bases 3/4.7.7, to change the surveillance schedule to be in accordance with NRC Generic Letter 90-09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by these proposed changes to Technical Specification 4.7.7 and Bases 3/4.7.7. There are no hardware or operational modifications associated with these changes. The proposed changes are consistent with those developed by the NRC and recommended in Generic Letter 90-09 for ensuring snubber operability.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by these proposed changes to Technical Specification 4.7.7 and Bases 3/4.7.7. There are no hardware or operational modifications associated with these changes.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are created. No new hardware changes are being made and no new operating manipulations are being created by these proposed changes to Technical Specification 3/4.7.7 and Bases 3/4.7.7.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no accident initiations are created. No changes in hardware or plant manipulations are being created by these proposed changes to Technical Specification 4.7.7 and Base 3/4.7.7.

3a. Not involve a significant reduction in a margin of safety because the proposed changes are consistent with those developed and approved by the NRC to ensure the revised schedule for visual inspections maintains the same confidence level in snubber operability as the existing schedule. Since the snubber Functional Test Program (which provides a high confidence level of snubber operability) is not being changed, and since there is no reduction in the NRC accepted licensing basis, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 3.4.6.2(f) and the associated bases to change the allowable leakage limits for pressure isolation valves (PIVs) in the reactor coolant system. Specifically, the allowable leakage limit for a PIV is proposed to be proportional to its size for all PIVs larger than 2 inches with a maximum upper limit of 5 gallons per minute (gpm) at a system differential pressure of 2235 ±20 pounds per square inch. For valve sizes 2 inches or less, the allowable leakage limit is proposed as 1 gpm which is the same as the present technical specification limit. Additionally, a series of editorial changes are proposed for Table 3.4-1 including the addition of valve sizes plus a listing of the maximum allowable leakage rates for the PIVs which conform to the proposed leakage criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1.The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee's proposal does not alter any of the actions required by the subject technical specification so that neither the probability nor the consequences of a previously evaluated accident are affected. Further, the proposed changes

do not affect either the operability requirements of these PIVs or the capability of these PIVs to perform their intended safety function.

2.The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. While the proposed changes to the maximum allowable leakage limits for the PIVs permits a higher leakage rate for all valve sizes greater than 2 inches, the total amount of identified reactor coolant system leakage from the reactor coolant system remains unchanged. The proposed changes are being made in recognition that larger valve sizes (i.e., those valves larger than 2 inches) can be expected to have larger leak rates. However, the proposed revisions do not affect previously evaluated accidents since both the total identified leakage rate and the other maximum leakage permissible rates (e.g., no pressure boundary leakage) remain unchanged.

3.The proposed changes do not involve a significant reduction in a margin of safety. The present margins of safety remain unchanged in that no hardware changes will be made and all other maximum permissible leakage rates, except for individual valves, remain the same.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991

Description of amendment request: The licensee is proposing to add two words to Technical Specification 4.6.1.1.a so as to achieve consistency with the definition for containment integrity contained in Technical Specification 1.7.a(2). The additional requests for three specific exemptions from the requirements of Appendix J to 10 CFR Part 50 will be reviewed separately as will the request for a change to Technical Specifications 3/4.6.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below. The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The change provides clarification and is administrative in nature.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remains unchanged. This change is merely an administrative change.

3. Involve a significant reduction in a margin of safety. The change provides clarification and is an administrative only change. Therefore, the margin of safety is unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 19, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Tables 3.3-1, 4.3-1, 3.3-3 and 4.3-2 and associated Bases to extend the allowable out-of-service times (AOTs) and surveillance test intervals for the analog channels of the Engineered Safety Features Actuation System (ESFAS). Extended AOTs are also proposed for the ESFAS actuation logic and actuation relays of the solid state protection system. These proposed changes are consistent with the guidance contained in the staff's Safety Evaluation Report (SER) issued on February 22, 1989 and the supplement to this SER issued on April 30, 1990. Both the SER and its supplement encouraged licensees to propose appropriate revisions to the affected portions of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1.The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The NRC staff's determination that some of the proposed changes are acceptable under this criterion was originally established in the staff's Safety Evaluation Report (SER) issued on February 22, 1989. This SER found acceptable two Westinghouse Topical Reports which are WCAP-10271, Supplement 2 and WCAP-10271, Supplement 2, Revision 1, "Evaluation of Surveillance Frequencies and Out-of-Service Times for the Engineered Safety Features Actuation System." These topical reports, submitted by the Westinghouse Owners Group (WOG) proposed extensions of surveillance test intervals (STIs) and extensions of allowable out-of-service times (AOTs) for tests and maintenance for the Engineered Safety Features Actuation System (ESFAS). This acceptance was conditioned on two matters which the licensee has satisfied.

The staff subsequently issued a supplement to the SER cited above (i.e., an SSER) on April 30, 1990, which found acceptable a portion of the WOG proposals, as cited below, contained in Appendix D to WCAP-10271, Supplement 2, Revision 1. This appendix presented supporting analyses for proposed AOT extensions for the logic cabinets of the reactor protection system. Additionally, the NRC staff concluded in this SSER that certain STI and AOT extensions for some of the ESFAS functions which are plant specific and not included in the Westinghouse Standard Technical Specifications, are acceptable. Some of these extensions include those proposed by the licensee. As with the SER cited above, the acceptance in the SSER of the WOG proposals was conditioned on two matters which the licensee has satisfied.

The impact on safety due to less frequent surveillance has been evaluated by the staff and its consultants and found to be not significant. Under a set of very conservative assumptions, the potential increase in core damage frequency

(CDF) and public health risk was less than 6 percent. The staff concluded in the SER cited above that this increase in the CDF was small compared to the range of uncertainty in the CDF analyses and, therefore, acceptable.

2.The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve hardware changes and do not result in a change in the manner in which the reactor trip system (RTS) or the ESFAS provide plant protection. No change is being made which alters the functioning of the RTS or ESFAS. The impact of the probability of the RTS or ESFAS functioning properly due to the extended STIs and AOTs, is discussed above (i.e., the small increase in the CDF).

3.The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above for the CDF, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. The licensee's commitment to monitor the effects of drift addresses this concern. Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

a. Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, and less frequent distraction of operations personnel.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and the shift supervisor to attend to instrumentation testing.

c. Longer repair times associated with increased AOTs will lead to higher quality repairs and improved reliability.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 16, 1990, as supplemented on March 29, 1990, and modified on December 13, 1990.

Description of amendment request: The proposed amendments of January 16, 1990 would have allowed unlimited use of solid stainless steel or solid Zircaloy-4 filler rods in place of fuel rods that are known to be failed, and would have removed the rod uranium weight limit of 1780 grams. The supplemental changes dated March 29, 1990 modified the original submittal to be consistent with the guidance of NRC Generic Letter (GL) 90-02, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications," dated February 1, 1990. Subsequently, the licensee was informed that the NRC was in the process of writing a second generic letter to rescind the use of water channels for the unlimited use of filler rods. The licensee's modified submittal dated December 13, 1990 proposed only the limited use of filler rods. In addition, a limit of five repaired fuel assemblies per core containing no more than three solid stainless steel or Zircaloy-4 filler rods per assembly would be also allowed and open water channels would not be permitted. The initial application dated January 16, 1990, was noticed in the **Federal Register** on February 7, 1990 (55 FR 4286). Due to the changes as noted above, the staff has determined that a renotice should be issued.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. In fact, the proposed change[s] will have no impact on the probability of occurrence or the consequences of an accident or malfunction of equipment. The only changes from the original submittal (dated January 16, 1990) are the restriction on the number of stainless steel or Zircaloy-4 filler rods to be used per cycle and the disallowance of open water channels,

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes or modifications are being made to the plant or its equipment. As noted above, the only changes are an additional restriction on the number of stainless steel or Zircaloy-4 filler rods and the disallowance of open water channels from our original submittal.

3. The proposed amendment[s] [do] not involve a significant reduction in a margin of safety. No physical changes or modifications are being made to the plant or its equipment. No changes are being made to the cycle-specific reload analysis. As previously stated, the only changes are an additional restriction on the number of stainless steel or Zircaloy-4 filler rods and the disallowance of open water channels from our original submittal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 8, 1990

Description of amendment request: Currently, the Surry Technical Specifications do not have allowed outage times (AOT) for the majority of the instruments listed in Tables 3.7-2 and 3.7-3. To provide consistent required operator actions and AOT for the reactor protection (trip) instruments and the engineered safeguards actuation instruments, Tables 3.7-1, 3.7-2 and 3.7-3 would be modified. Table 3.7-1, Reactor Trip Instruments, was previously modified in accordance with the Westinghouse Owners Group Topical Report WCAP-10271, Supplement 1 and the NRC Safety Evaluation Report dated February 21, 1985. The proposed Technical Specification change reformats and provides action statements and AOT for each functional unit (instrument) in Tables 3.7-2 and 3.7-3. The action statements and AOT are consistent with WCAP-10271, Supplement 2, Revision 1, "Evaluation of Surveillance Frequencies and Out of Service Times for the Engineered Safety Features Actuation System (ESFAS)" and the NRC Safety Evaluation Reports (SER) dated February 22, 1989 and April 30, 1990. Several additional changes

would be incorporated into Table 3.7-1 to maintain consistent action statements and AOT for the instruments that are included in Tables 3.7-2 and 3.7-3. In addition, operability and surveillance requirements for the feedwater isolation/turbine trip instruments would be added to Table 3.7-3 in accordance with Generic Letter 89-19, "Safety Implication of Control Systems in LWR Nuclear Power Plants." The surveillance intervals would not be changed to quarterly at this time. Surry Power Station performs surveillance tests of the reactor protection and engineered safeguards instruments on a monthly basis. To make the Surry Technical Specifications more consistent with the Standard Technical Specifications, operability requirements for the reactor protection system and engineered safeguards system interlocks would be included in Tables 3.7-1 and 3.7-2. The appropriate surveillance requirements for these interlocks, which are enveloped by the above-cited topical reports and NRC Safety Evaluations, would be added to Table 4.1 in accordance with Generic Letter 89-19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the proposed changes against the criteria of 10 CFR 50.92 and has concluded that the changes as proposed do not pose a significant hazards consideration. Specifically, the proposed change[s] will reformat the [e]ngineered [s]afeguards instruments tables, provide operability requirements for [r]eactor [p]rotection and [e]ngineered [s]afeguards interlocks, and provide action statements and allowed outage times consistent with WCAP[-]10271, Supplement 2, "Evaluation of Surveillance Frequencies and Out of Service Times for the Engineered Safety Features Actuation System (ESFAS)." Thus, operation of the Surry Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. Based on the Westinghouse/WOG analyses and Brookhaven National Laboratory sensitivity studies of those analyses, the proposed ESFAS changes would have only a small impact on plant risk. The overall upper bound for the Core Damage Frequency (CDF) increase is less than 6% for the proposed changes which is relatively small compared to the range of uncertainty in the CDF analyses. Since the proposed change[s] [do] not extend the surveillance frequencies to quarterly, the overall CDF increase will be much smaller than the Westinghouse/WOG analyses projections of 2.4%.

2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. Physical plant modifications are not being made and overall plant operations are not being changed. Only instrument [a]llowed [o]utage [t]imes, [a]ction [s]tatements, and surveillance requirements are being included or changed. Therefore, new accident precursors are not being generated and no new or different kind of accident is created.

3. Involve a significant reduction in the margin of safety. Plant operations are not changed nor are any of the accident analysis assumptions modified or exceeded by [these changes]. The changes in [a]llowed [o]utage [t]imes for [e]ngineered [s]afeguards [a]ction instruments and [o]perator [a]ctions with inoperable instruments have no impact on the margin of safety because as long as the minimum channel operable requirements are met the unit is operating within the design basis. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: December 30, 1987, August 1, 1989, and March 29, 1990.

Description of amendments request: The licensee proposes amending Technical Specification Section 15.6, ADMINISTRATIVE CONTROLS, to document changes to the staff organization and to remove the organization charts from the Technical Specifications. New requirements would be added to Sections 15.6.2.1 and 15.6.2.2 to include essential aspects of the organization charts not already contained in the Technical Specifications. Figures 15.6.2-1, "Management Organization Chart," 15.6.2-2, "Conduct of Plant Operations," 15.6.2-3, "Wisconsin Electric Power Company Off-Site Management Fire Protection Organization," and 15.6.2-4, "Point Beach Nuclear Plant Fire Protection Organization," would be removed.

Technical Specification 15.6.2.2.d requiring the presence of an individual qualified in radiation protection when fuel is in either reactor would be revised to allow this position to be unfilled for up to 2 hours to accommodate unexpected absences.

A new item would be added to Section 15.6.2.1 to specify that individuals who carry out health physics and quality assurance functions have sufficient organizational freedom to be independent of operational pressure.

The proposed amendment would increase the quorum requirements for meetings of the Managers Supervisory Staff set forth in Technical Specification 15.6.5.1.5 and the Offsite Review Committee set forth in Technical Specification 15.6.5.2.6.

Several non-substantive administrative changes in Section 15.6 are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes "...are strictly administrative and do not affect physical plant operation or the procedures for operating the plant. Therefore they cannot affect previously evaluated accidents."

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because "...no physical plant changes or changes to plant operating parameters or procedures are proposed."

(3) The proposed changes do not involve a significant reduction in a margin of safety because "...each of the proposed changes are strictly administrative in nature and the changes will enhance the management of our facility."

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and

Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London, Connecticut

Date of application for amendment: March 21, 1991

Brief description of amendment request: The proposed amendment would revise Facility Operating License No. NPF-49 to reflect the fact that Public Service Company of New Hampshire will be a wholly owned subsidiary of Northeast Utilities as of the merger date.

Date of individual notice in federal register: May 13, 1991 (56 FR 22024)

Expiration date of individual notice: June 12, 1991

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 17, 1991

Brief description of amendments: The amendments change the Technical Specifications (TSs) for Unit 2 to require that the Safety Injection Tanks (SITs) be operable throughout Mode 3. The Unit 1 TSs already include this requirement. The amendments also revise the TSs surveillance requirements for the SITs of both Units 1 and 2 to be consistent with the operability requirements during Mode 3 operation, includes editorial changes to the applicable TSs titles to accurately reflect the amendment changes, and the Index and Bases Sections are updated to reflect the changes in operability and surveillance requirements. Date of issuance: May 6, 1991 Effective date: May 6, 1991 Amendment Nos.: 153 and 133

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in federal register: April 3, 1991 (56 FR 13658) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 7, 1991, as supplemented April 9, 1991.

Brief Description of amendments: The proposed amendment removes the existing visual inspection surveillance requirements and acceptance criteria associated with Technical Specification 3/4.7.5 and inserts a refueling-outage-based visual examination schedule.

Date of issuance: May 8, 1991

Effective date: May 8, 1991

Amendment Nos.: 152 and 182

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4861) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: February 28, 1991

Brief description of amendment: The amendment will establish periodic operability testing of the steam generator overfill protection system at the Haddam Neck Plant. Date of Issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No.: 136

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13661) Th Commission's related evaluation of this

amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 26, 1990

Brief description of amendment: The amendment revises Technical Specification Section 3.3 to reflect changes made to the power feeds to the Component Cooling Water Pumps; Sections 3.7 and 4.6 to show the increased Emergency Diesel Generator (EDG) short-term rating and the resultant increase in required EDG fuel oil storage requirements; and to update the designation of power feeds at the Buchanan Substation. Date of issuance: May 9, 1991 Effective date: May 9, 1991 Amendment No.: 153

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1990 (55 FR 45878) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 15, 1991

Brief description of amendment: The amendment revised Technical Specification 6.0, "Administrative Controls" by changing the title "GGNS General Manager" to "General Manager, Plant Operations".

Date of issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No: 76

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13663) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 7, 1990

Brief description of amendment: The amendment revised the Technical Specifications (TS) by removing the TS on radioactive effluents and radiological environmental monitoring and adding controls to include them in the offsite Dose Calculational Manual (ODCM). Specifications on solid radioactive wastes will be relocated to the Process Control Program (PCP). These revisions are in response to Generic Letter 89-01 dated January 31, 1989.

Date of issuance: April 24, 1991

Effective date: April 24, 1991

Amendment No.: 68

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 23, 1991 (56 FR 2548) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 28, 1990

Brief description of amendment: Modify surveillance frequency for ECCS pumps from monthly to quarterly, consistent with ASME code, and make administrative clarification.

Date of issuance: May 9, 1991

Effective date: May 9, 1991

Amendment No.: 121

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13664) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 20, 1991

Brief description of amendment: The amendment revises Technical Specification 4.7.5 to incorporate the recommendations on snubber visual inspection frequencies contained in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The amendment increases the allowable time interval between visual inspections of snubbers when the snubbers are operating at a high level of dependability. The amendment also makes editorial changes to delete references to tests and inspections required during the first refueling outage since those tests and inspections have been completed. Date of issuance: May 6, 1991 Effective date: May 6, 1991 Amendment No.: 29

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13657) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: January 21, 1991

Brief description of amendment: The amendment revises Technical Specification Table 4.3.7.10-1 to require isolation of the offgas system as part of the 18-month channel calibration for the noble gas activity monitor in lieu of the requirement to demonstrate actual isolation during the monthly functional test. This amendment also revises Technical Specification Table 3.3.7.10-1 to reflect the as-built configuration of the noble gas activity monitor instrumentation and makes an editorial change. Date of issuance: May 9, 1991 Effective date: May 9, 1991 Amendment No.: 30

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13665) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: March 12, 1991

Brief description of amendment: The amendment changed Sections 2.1.2, 3.2.1, 3.2.3 and the pertinent Bases of the Technical Specifications to reflect changes to the Minimum Critical Power Ratio (MCPR) Safety Limit as a result of changes in reload fuel type and to reflect the revised computer methods used to calculate thermal limits.

Date of issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No. 14

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13669) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 21, 1988

Brief description of amendment: This amendment revised Table 3.3-7, "Seismic Monitoring Instrumentation," and Table 4.3-4, "Seismic Monitoring Instrumentation Surveillance Requirements," of Technical Specification 3/4.3.3.3. The tables were revised to (1) reflect the actual and appropriate configuration of the seismic trigger, its associated station site strong motion triaxial accelerometer and the shield building peak recording accelerometer, and (2) revise the frequency range and include an actuation range of the station site seismic trigger.

Date of issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No. 156

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34383) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 30, 1990

Brief description of amendments: These amendments revise Technical Specifi cation 15.3.1.F, Limiting Conditions For Operation, Reactor Coolant System, Minimum Conditions for Criticality, by adding a new specification 3 which requires that during approach to criticality at least one count per second, attributable to neutrons shall register on a narrow range source monitor. The corresponding basis section was modified to include the basis for this new specification. Technical Specification 15.5.3.A.5, Design Features, Reactor, would be revised to state that neutron source assemblies may be used instead of stating that they are used.

Date of issuance: May 8, 1991

Effective date: May 8, 1991

Amendment Nos.: 127 and 131

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11787) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event,

the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 28, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the

factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Scriba, New York

Date of amendment request: April 29, 1991

Description of amendment request: The amendment revises Technical Specification 3/4.6.1.7 to permit plant operation to continue until the next cold shutdown (to occur no later than September 30, 1991) with an inoperable containment purge inboard isolation valve (2CPS*AOV106).

Date of Issuance: May 9, 1991

Effective date: May 9, 1991

Amendment No.: 31

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 9, 1991.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Dated at Rockville, Maryland, this 21 day of May 1991.

For the Nuclear Regulatory Commission

Jose A. Calvo,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-12529 Filed 5-28-91; 8:45 am]

BILLING CODE 7590-01-D

OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1-6

AGENCY: Oversight Board for the Resolution Trust Corporation.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), announcement is hereby published for the regional advisory board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. June 11, 1991, 10 a.m. to 4 p.m., Oklahoma City, OK, Region 2 Advisory Board.
2. June 13, 1991, 10 a.m. to 4 p.m., Phoenix, AZ, Region 6 Advisory Board.
3. June 18 1991, 10 a.m. to 4 p.m., Raleigh, N.C., Region 1 Advisory Board.
4. June 28, 1991, 10 a.m. to 4 p.m., Ft. Worth, TX, Region 4 Advisory Board.
5. July 2, 1991, 10 a.m. to 4 p.m., Detroit, MI, Region 3 Advisory Board.
6. July 9, 1991, 10 a.m. to 4 p.m., Seattle, WA, Region 5 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Oklahoma City, OK—Metro Tech, 1990 Springlake Drive, Auditorium.
2. Phoenix, AZ—Phoenix Civic Plaza, 225 East Adams Street, Flagstaff Rooms 4 & 5.
3. Raleigh, NC—Radisson Plaza Raleigh, 420 Fayetteville Strteet Mall, Hanover III Rm.
4. Ft. Worth, TX—Texas Christian University, M.J. Neeley School of Business, 2900 Lubbock, Dan Rogers Hall, room 134.
5. Detroit, MI—Federal Reserve Bank of Chicago/Detroit Branch, 160 W. Fort Street, Conference Room.
6. Seattle, WA—Seattle International Trade Center, 2601 Elliott Ave., Skyline Room, 5th Floor.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the ACT), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: A detailed agenda will be available at the meeting. Discussions will center around the activities of each region. The issues to be addressed include: (1) Making the RTC more user friendly; (2) RTC seller financing program; (3) RTC pricing policy; (4) RTC contracting programs as it relates to minority and women outreach programs; (5) RTC affordable housing program; and (6) local real estate market conditions. In addition, there will be briefings by the RTC on activity pertaining to that region and policy updates by the Oversight Board.

Statements: Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 10 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to approximately five minutes. There will be opportunity to sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: May 24, 1991.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 91-12637 Filed 5-28-91; 8:45 am]

BILLING CODE 2222-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next meeting on Monday and Tuesday, June 10-11, 1991, in the City Centre Ballroom of the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC. The meetings will begin a 9 a.m.

ADDRESSES: The Commission is located at 2120 L Street, NW. in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

SUPPLEMENTAL INFORMATION: The discussions will include review of HCFA's Notice of Proposed Rule Making for the Medicare Fee Schedule, the President's budget, and the HHS report on access and utilization, as well as the Commission's report to Congress on physician payment under Medicaid due on July 1, 1991.

Information about the exact agenda can be obtained on Wednesday, June 5, 1991. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91-12594 Filed 5-28-91; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29211; File No. SR-NASD-91-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Operation of the SelectNet System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend for six months the current operational structure of the SelectNet system, which was approved by the Commission on November 21, 1990.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizaton's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 21, 1990, the SEC approved enhancements to SelectNet [1] which included a six month approval for three system "rules" that were thought necessary to preclude the type of abuses occurring in the Small Order Execution System ("SOES") in SelectNet.[2] The six month period expires on May 21, 1991. The NASD believes that SelectNet should retain its current operational structure, in order to allow more time to evaluate whether the rules should be made permanent, or should be modified in any way. SelectNet currently operates under the following rules and the Association is proposing to retain this structure for another six months:

- SelectNet will be available only for agency or principal orders that are greater than the SOES tier size.
- Market makers receiving orders through SelectNet will not be required to execute partial orders, but may elect to execute partials at their discretion.
- In the event of an emergency or during extraordinary market conditions, either one or both of the aforementioned conditions may be eliminated pursuant to the authority granted to the Board of Governors and its designees in Article VII, Section 3 of the NASD By-Laws.

These rules were implemented for SelectNet in November because the mandatory display of size that requires market makers to post quotations at the SOES tier level took effect on December 1, 1990 and the SEC firm quote rule requires broker/dealers to execute orders presented to them at their quoted size. At that time, the NASD believed that the same sort of abuses taking place in SOES might occur in SelectNet, especially as SelectNet allows principal as well as agency orders, and therefore sought Commission approval of these rules. The NASD notes that SOES abuse remains of great concern to the NASD and the various proposals submitted by the NASD to curb abuses and improve operation of the system are still under consideration by the Commission.

The NASD believes that SelectNet should continue operating as it does today, retaining its interactive, negotiation features, with market maker participation truly voluntary as opposed to a system that takes on the characteristics of an automatic execution system with mandatory participation requirements—recognizing that during emergency conditions, the fundamental nature of the system may be modified to include mandatory market maker obligations.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market." SelectNet offers an automated, negotiation trading environment that results in locked-in trades sent to clearing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**, and, in any event, on or before May 21, 1991, the date on which the current approval for SelectNet operational rules expires. The NASD believes that the SelectNet service benefits members and their public customers by providing an automated alternative to traditional telephone negotiation that is more responsive to a trading room environment and easier for members to use. In light of these factors, the NASD requests that the Commission approve the rule change on an accelerated basis, on or before May 21, 1991.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval is appropriate to allow the NASD to retain market maker support of the SelectNet system and to continue to assess the impact of the

[1] See Securities Exchange Act Release No. 28636 (November 21, 1990); 55 FR 49732 (November 30, 1990).

[2] See Securities Exchange Act Release No. 28709 (December 19, 1990); 55 FR 53224 (December 27, 1990), noticing SR-NASD-90-59; Release No. 29161 (May 9, 1991) noticing SR-NASD-91-17; and Release No. 29182 (May 9, 1991) noticing SR-NASD-91-18. All of the aforementioned filings contain proposals to amend SOES Rules.

existing operational rules on SelectNet usage. The Commission expects that during this second six month period the NASD will continue to consider the feasibility of a direct response to the potential for abuse of SelectNet by a small number of active professional traders, as an alternative to the present limitations imposed on SelectNet participants. We believe that leaving the existing operational rules intact will aid in preventing attempts by market participants to abuse the automated routing in the system as experienced in SOES,[3] while allowing the NASD additional time to consider whether these rules should be made permanent or modified in any way.

Furthermore, we are of the opinion that the operational rule which stipulates that market makers receiving orders through SelectNet will not be required to execute partial orders but may execute partial orders at their discretion promotes the voluntary nature of SelectNet trading. As a result, we believe that use of the system by market participants as an alternative vehicle to efficiently negotiate, execute, and compare transactions is encouraged.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of 6 months from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12640 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

[3] In SOES sophisticated market professionals found ways to abuse the automated nature of the system to the detriment of market maker participation and liquidity by, for example, sending in orders for automatic execution against the last market maker to update a quotation in an issue.

[Release No. 34-29210; No. SR-Phlx-91-22]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Odd-lot Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commisson is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 227 and 229 respecting the execution of odd-lot orders. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend the provision of Rules 227 and 229 relating to the execution of odd-lot limit orders. Currently, these rules provide odd-lot limit orders with the guarantee of an execution after a sale occurs in the primary market through the limit price. The amendments would improve this guarantee from the vantage of customers by guaranteeing them an execution of their odd-lot limit order after a sale occurs in the primary market at the limit price. The Phlx believes that this proposed rule change is procompetitive and generally reflects the evolving industry structure that affords odd-lot orders highly efficient and price superior execution services.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-22 and should be submitted by June 19, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12639 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Autozone, Inc.
Common Stock, $.01 Par Value (File No. 7-6877)
Caldor Corp.
Common Stock, $.01 Par Value (File No. 7-6878)
Comerica, Inc.
Common Stock, $5.00. Par Value (File No. 7-6879)
Continuum, Inc.
Common Stock, $.10 Par Value (File No. 7-6880)
Duracell International Inc.
Common Stock, $.01 Par Value (File No. 7-6881)
Western Waste Industries
Common Stock, No Par Value (File No. 7-6882)
Ann Taylor Stores Corp.
Common Stock, $.0068 Par Value (File No. 7-6883)
Telefonos de Mexico S.A. de C.V.
American Depository Shares (File No. 7-6884)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12571 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Avon Products, Inc.
Preferred Equity Redemption Stock, $2.00 Par Value (File No. 7-6851)
Genentech, Inc.
Common Stock, $0.02 Par Value (File No. 7-6852)
Greenery Rehabilitation Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-6853)
MDC Holdings, Inc.
Common Stock, $0.01 Par Value (File No. 7-6854)
National Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-6855)
NUI Corp.
Common Stock, $10.00 Par Value (File No. 7-6856)
Sensormatic Electronics Corp.
Common Stock, $0.01 Par Value (File No. 7-6857)
Utilicorp United, Inc.
$2.4375 Perference Stock, No Par Value (File No. 7-6858)
Go Video, Inc.
Common Stock, $.001 Par Value (File No. 7-6859)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12572 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Calisle Plastics, Inc.
Class A Common Stock, $.01 Per Value (File No. 7-6870)
Jones Apparel Group, Inc.
Common Stock, $.01 Par Value (File No. 7-6871)
Sensormatic Electronics Corporation
Common Stock, $.01 Par Value (File No. 7-6872)
Ann Taylor Stores Corporation
Common Stock, $.0068 Par Value (File No. 7-6873)
International Colin Energy Corporation
Common Stock, No Par Value (File No. 7-6874)
NAPA Valley Bancorp
Common Stock, No Par Value (File No. 7-6875)
Tremont Corporation
Common Stock, $1.00 Par Value (File No. 7-6876)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced

applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12573 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corporation
Common Stock, $.0068 Par Value (File No. 7-6849)
Jones Apparel Group, Inc.
Common Stock, $.01 Par Value (File No. 7-6850)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 91-12574 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corp.
Common Stock, $.0068 Par Value (File No. 7-6860)
Blackstone Strategic Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6861)
Cabot Oil & Gas Corp.
Common Stock Class A, $.10 Par Value (File No. 7-6862)
Graham-Field Health Products, Inc.
Common Stock, $.025 Par Value (File No. 7-6863)
Intellicall, Inc.
Common Stock, $0.01 Par Value (File No. 7-6864)
National Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-6865)
Pet, Inc.
Common Stock, $0.01 Par Value (File No. 7-6866)
Sierra Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-6867)
Sizzler International, Inc.
Common Stock, $0.01 Par Value (File No. 7-6868)
Telefonos de Mexico, SA de CV
American Depositary Receipts (File No. 7-6869)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12641 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18160; 811-1252]

American Capital Growth Fund, Inc.; Notice of Application

May 21, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: American Capital Growth Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 7, 1991. Amendments were filed on March 21, 1991 and May 21, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2800 Post Oak Blvd. Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504-2259 or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant registered under the 1940 Act by filing Form N–8A on March 19, 1964. Its initial registration statement on Form S–5 under the Securities Act of 1933 was filed on or about March 26, 1964, and became effective on July 21, 1964. Ten million (10,000,000) shares of capital stock, all of which shares are of one class, $1.00 par value, were registered. Applicant was organized as a Maryland corporation.

2. On March 9, 1990, Applicant's Board of Directors approved its Agreement and Plan of Reorganization (the "Plan") and recommended its submission to Applicant's shareholders. Proxy materials were mailed to shareholders on May 23, 1990. On June 26, 1990, at a special meeting of shareholders, the Plan was approved by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of Applicant.

3. Pursuant to the Plan, Applicant transferred all of its assets and liabilities to American Capital Enterprise Fund ("Enterprise Fund") (File No. 811–630) on June 29, 1990 in exchange for shares of Enterprise Fund. The net asset values per share of outstanding shares of the Applicant and Enterprise Fund were each determined as of the close of business of the New York Stock Exchange on June 29, 1990. On that date, Applicant transferred 564,184.148 shares of its capital stock having a net asset value of $20.77 per share for 988,915.632 shares of the Enterprise Fund, with a net asset value of $11.85 per share. The aggregate net asset value of the shares exchanged was $11,718,650.24.

4. Applicant and Enterprise Fund each bore their own expenses relating to the reorganization. Applicant's expenses totalled approximately $18,664 while Enterprise Fund expenses totalled approximately $8,725. All expenses of the reorganization were allocated to, and paid by, American Capital Asset Management, Inc., Applicant's investment adviser. These expenses consisted of legal fees, printing, outside auditor's fees and licenses and fees. No brokerage commissions were paid in connection with the reorganization.

5. Applicant intends to file articles of dissolution within twelve months of the closing date. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

6. As of the date of filing the application, the Applicant was current in all filings required to be made pursuant to the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12842 Filed 5–28–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Friday, June 28th, from 8:30 a.m. to 10:30 a.m., in the Lafayette Hotel, One Avenue de Lafayette, Boston, Massachusetts.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, U.S. Small Business Administration, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, telephone 202/205–6766.

Dated: May 22, 1991.

Jean Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–12577 Filed 5–28–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Intelligent Vehicle-Highway Society of America (IVHS America) will hold a meeting of its Coordinating Council. The IVHS America provides a forum for national discussion and recommendation on IVHS activities including system architecture, standards, human factors, institutional issues and program priorities. The charter for the utilization of IVHS America as an advisory committee within the meaning of section 3(2)(C) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, as amended (Pub. L. 92–463), was approved by the General Services Administration on February 28, 1991. This charter establishes the Executive Committee and the Coordinating Council of IVHS America as an advisory committee under the FACA when they provide advice or recommendations to DOT officials on IVHS policies and programs.

DATES: The Coordinating Council will meet on June 18 and 19, 1991, from 8:30 a.m. to 3:30 p.m., c.t. The sessions are open to the public without charge under the provisions of the FACA and are expected to focus on: (1) A review of the goals and objectives of the individual IVHS America technical committees; (2) The establishment of additional technical committees as required; and (3) A discussion of future program activities of the technical committees.

ADDRESSES: Marriott City Center Hotel, 30 South 7th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, FHWA, HTV–10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2197, office hours are from 7 a.m. to 3:30 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Constantino, IVHS America, 1776 Massachusetts Avenue, NW., Fifth Floor, Washington, DC 20036, (202) 857–1242.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 20, 1991.

T. D. Larson,

Administrator.

[FR Doc. 91–12579 Filed 5–28–91; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Exemption of Waiver

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that two railroads have petitioned the Federal Railroad Adminstration (FRA) for a waiver of compliance with provisons of the Hours of Service Act (83 Stat. 464, Pub. L. No. 91–189, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12-hour limitation.

Atlantic and Gulf Railroad (AGLF)

[FRA Waiver Petition Docket No. HS-91-5]

The Gulf & Ohio Railways seeks an exemption for AGLF so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AGLF states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The AGLF provides service over 78 miles of trackage between Thomasville and Sylvester, Georgia. The AGLF interchanges with CSX Transportation, Inc. at Thomasville and Albany, Georgia; with Norfolk Southern Corporation at Camilla and Chapco, Georgia; and with the Georgia Great Southern Division-South Carolina Central Railroad Company, Inc. at Albany, Georgia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstated good cause for granting this exemption.

Kansas City Terminal Railway Company (KCT)

[FRA Waiver Petition Docket No. HSR-91-1]

The KCT seeks a waiver from the recordkeeping requirements of title 49, Code of Federal Regulations, 228.17 (a)(4) and (a)(5), regarding Dispatcher's Records of Train Movements. The KCT requests relief from recording the weather conditions at 6-hour intervals, and identification of enginemen and conductors and their times on-duty on Dispatcher's Records of Train Movements.

The KCT, owned by nine railroads, dispatches train movements and directs its own switching operations over approximately twelve geographical miles of trackage, all of which is within interlocking limits and located within the metropolitan area of Kansas City.

The petitioner indicates that granting the waiver is in the public interest and will not adversely affect safety. Interested persons are invited to participate in these proceedings by submitting written views and comments FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS-90-XX) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590.

Communications received before July 8, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington DC on May 20, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-10624 Filed 5-28-91; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Docket No. P-90-5W; Notice 2]

Texas Gas Transmission Corporation; Transportation of Natural and Other Gas by Pipeline, Grant of Waiver

Texas Gas Transmission Corporation (Texas Gas) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 192.179(a)(2), which requires each point on the pipeline in a Class 3 location to be within 4 miles of a sectionalizing block valve. Texas Gas is adding a 13.06 mile section of 36-inch outside diameter loop line along its existing main line system in Jefferson County, Kentucky, and seeks permission to align placement of valves on the new 36-inch line concurrent with valves on two existing 26-inch lines. The 13.06 mile section of new construction extends across Class 1, 2, and 3 Locations and includes farmland, single-family housing areas, and urban development.

The 3 existing valve sites (BV-55A, BV-56, and BV-56A) are shown on Emergency Response Location Drawing Nos. SK-871-PL, SK-872-PL, and SK-873-PL, which are available in the Docket. Two proposed sites for the new line, the 579.41 (BV-56) and 588.28 (BV-56A) mile locations, require a waiver because from point to point there is a 0.87 mile section of pipeline that is more than 4 miles from a valve (between the 583.41 and 584.28 mile points) as required by the Class 3 location regulation. The BV-56 valve site is in a Class 3 location and is surrounded by a trailer park. Class 3 locations are characterized as areas with 46 or more buildings per mile of pipeline. The BV-56A site is within a Class 1 area. Class 1 locations have 10 or less buildings within the prescribed area. (See 49 CFR 192.5 for class location definitions.)

In response to this petition, and the justification contained therein, RSPA issued a Notice of Petition for Waiver inviting interested parties to comment (Notice 1) (56 FR 8826; March 1, 1991). In that notice, RSPA explained why granting a waiver from § 192.179(a)(2) to allow placement of valves on the new 36-inch line concurrent with valves on two existing 26-inch lines would not affect safety.

Comments were received from four pipeline operators and one interstate pipeline association. Each commenter endorsed the petition and recommended granting the waiver.

In accordance with the foregoing, RSPA, by this order, finds that compliance with § 192.179(a)(2) is unnecessary for the reasons explained in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, Texas Gas's petition for waiver from compliance with § 192.179(a)(2) is granted.

Authority: 49 U.S.C. 1672(d); 49 CFR 1.53, and appendix A of part 106.

Issued in Washington, DC on May 23, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-12610 Filed 5-28-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Altus Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Altus Federal Savings Bank, Mobile, Alabama, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12621 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Ludington Federal Savings Bank, Ludington, MI; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Ludington Federal Savings Bank, Ludington, Michigan, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12620 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Altus Bank, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Altus Bank, A Federal Savings Bank, Mobile, Alabama, OTS No. 2747, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12615 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Ludington Savings Bank, F.S.B., Ludington, MI; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Ludington Savings Bank, F.S.B., Ludington, Michigan, OTS No. 4100, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12616 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Palo Duro Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is here by given that, pursuant to the authority contained in subdivisions (f) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Palo Duro Federal Savings and Loan Association, Amarillo, Texas ("Association,"), with the Resolution Trust Corporation as sole Receiver for the Association on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12618 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Red River Federal Savings and Loan Assoc.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Red River Federal Savings and Loan Association, Choushatta, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12617 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Time Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Time Federal Savings and Loan Association, San Francisco, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12619 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-21; OTS No. 3292]

Baxley Federal Savings Bank, Baxley, Georgia; Final Action; Approval of Conversion Application

Notice is hereby given that on May 13, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Baxley Federal Savings Bank, Baxley, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348-5217.

Dated: May 14, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12557 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-25; OTS No. 0176]

First Federal Bank, FSB, Waukegan, IL; Final Action, Approval of Conversion Application

Notice is hereby given that on May 14, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Bank, FSB, Waukegan, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: May 15, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12558 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-22; OTS No. 5300]

First Federal Savings Bank, Calhoun, GA; Final Action, Approval of Conversion Application

Notice is hereby given that on May 13, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority,

approved the application of First Federal Savings Bank, Calhoun, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: May 14, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–12559 Filed 5–28–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–28; OTS No. 3817]

First Federal Savings and Loan Association of Morgantown, Morgantown, WV; Final Action, Approval of Conversion Application

Notice is hereby given that on May 15, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Morgantown, Morgantown, West Virginia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania, 15222–4893.

Dated: May 16, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–12560 Filed 5–28–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 30, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:
Compliance Status Report

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: May 23, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–12752 Filed 5–24–91; 1:25 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

Dated: May 22, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: May 29, 1991, 9:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Docket No. IN89–1–000, Transcontinental Gas Pipe Line Corporation.
(2) Docket No. IN89–1–001, Transcontinental Gas Pipe Line Corporation
(3) Docket No. RP88–68–000, *et al.*, Transcontinental Gas Pipe Line Corporation
(4) Transcontinental Gas Pipe Line Corporation, Sulpetro Limited Natural Gas.
(5) Transcontinental Gas Pipe Line Corporation, Imbalances.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12699 Filed 5–23–91; 4:36 pm]

BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Dated: May 23, 1991.

TIME AND DATE: 2:00 p.m., Thursday, May 30, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Eastern Associated Coal Corporation*, Docket No. WEVA 89–192. (Issues include whether the Mine Act authorized the Secretary of Labor to issue to Eastern an imminent danger order and an unwarrantable failure order, pursuant to 30 U.S.C. §§ 817(a) and 814(d)(2), for the same violative condition.)

Any person intending to attend this meeting who requires special accessibility features, and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 708–9300 for TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91–12802 Filed 5–25–91; 3:07 am]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Friday, May 31, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–12688 Filed 5–23–91; 4:36 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–91–16]

TIME AND DATE: Wednesday, June 5, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 731–TA–516 (Preliminary) (Fresh Kiwifruit from New Zealand)—briefing and vote.
   Inv. 731–TA–517 (Preliminary) (Refined Antimony Trioxide from the People's Republic of China)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: May 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–12766 Filed 5–24–91; 1:26 pm]

BILLING CODE 7020–02–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee; Notice

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on June 3, 1991. The meeting will commence at 9:30 a.m.

PLACE: The Madison Hotel, 15th and "M" Streets, N.W., The Executive Chambers, Washington, DC 20005, (202) 862–1600.

STATUS OF MEETING: Open [A portion of the meeting may be closed, subject to a

vote by a majority of the Board of Directors, to discuss personnel-related and personal matters under the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) and (6), and 45 C.F.R. Sections 1622.5(a) and (e)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consideration of Applications Submitted for Pending Inspector General Position Vacancy.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: May 24, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–12835 Filed 5–24–91; 3:58 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 91–12568.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Meeting commencing at 5:00 p.m. on June 2, 1991.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: May 23, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–12833 Filed 5–24–91; 4:16 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 27, June 3, 10, and 17, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 27

Friday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. First Initial Decision LBP–91–12 (In the Matter of the Curators of the University of Missouri, Byproduct License No. 24–00513–32; Special Nuclear Materials License No. SNM–247) (Tentative)

Week of June 3—Tentative

Friday, June 7

1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 10—Tentative

Monday, June 10

2:00 p.m.
Briefing on Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

Tuesday, June 11

10:00 a.m.
Briefing by Agreement States on Compatibility Issues (Public Meeting)

Wednesday, June 12

10:00 a.m.
Briefing on Progress of Design Certification Review and Implementation (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 17—Tentative

Wednesday, June 19

1:30 p.m.
Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 on May 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Return of Topaz II Reactor System to the Soviet Union" (Public Meeting), be held on May 21 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: May 23, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–12745 Filed 5–24–91; 1:24 pm]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 13, 1991.

PLACE: Room 410, 1825 K Street, NW., Washington, D.C. 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *Caterpillar, Inc.*

OSHRC Docket No. 87–0922

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634–4015.

Dated: May 23, 1991.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 91–12803 Filed 5–24–91; 3:08 pm]

BILLING CODE 7600–01–M

Corrections

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. TM-91-01]

Nominations for Members of the National Organic Standards Board

Correction

In notice document 91-8881 appearing on page 15323 in the issue of Tuesday, April 16, 1991, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-8881 Filed 4-15-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

Correction

In notice document 91-9602 beginning on page 18823 in the issue of Wednesday, April 24, 1991, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line "5693" should read "6593".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting of National Cancer Advisory Board, Subcommittee on Information and Cancer Control for the Year 2000

Correction

In notice document 91-8992 beginning on page 15627 in the issue of Wednesday, April 17, 1991, the file line was left off, make the following correction:

On page 15627, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-8992 Filed 4-16-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing--Federal Housing Commissioner

24 CFR Part 206

[Docket No.R-91-1508;FR-2933-F-01]

Elimination of Reservations of Insurance Authority Home Equity Conversion Mortgage Insurance Program

Correction

In rule document 91-9125 beginning on page 16002 in the issue of Friday, April 19, 1991, make the following correction:

§ 206.15 [Corrected]

On page 16003, in the third column, in § 206.15, in the first line, paragraph designation "(1)" should read "(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Northern Spotted Owl

Correction

In proposed rule document 91-10263 beginning on page 20816 in the issue of Monday, May 6, 1991, make the following correction:

On page 20822, in the second column, in the tenth line from the bottom, "May 31" should read "June 5".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act

Correction

In the issue of Tuesday, March 5, 1991, on page 9252, in the first column, in the correction of rule document 91-4704, the page number "5250" and "5251" should read "8250" and "8251" throughout the document.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AA90

Access Authorization Program for Nuclear Power Plants

Correction

In rule document 91-9479 beginning on page 18997 in the issue of Thursday, April 25, 1991, make the following correction:

§ 73.56 [Corrected]

On page 19007, in the first column, in § 73.56(a)(2), in the seventh line, "which" should read "whichever".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF20

Accrued Benefits

Correction

In rule document 91-9622 beginning on page 18732 in the issue of Wednesday, April 24, 1991, make the following correction:

On page 18733, in the first column, in amendatory instruction 1, in the second line, "amended" should read "revised".

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federal register

Wednesday
May 29, 1991

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86

Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility and Particulate Emissions From Urban Buses; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-3957-1]

RIN 2060-AD37

Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility; and Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Standards for Particulate Emissions From Urban Buses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the following regulatory requirements as mandated by the Clean Air Act Amendments of 1990 (CAA): (a) A particulate emission standard of 0.25 gram per brake horsepower-hour (g/BHP-hr) for 1991 and 1992 model year urban buses and accompanying required changes to the urban bus noncompliance penalties, and (b) modification of existing regulations restricting the volatility of summertime gasoline. EPA proposes to revise the maximum allowable Reid Vapor Pressure (RVP) for gasoline from 7.8 to 9.0 pounds per square inch (psi) in those areas which are designated as unclassifiable or in attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The state-by-state RVP standards in EPA's current regulations, scheduled to take effect in the summer of 1992 (55 FR 23658, June 11, 1990), are proposed to be revised such that RVP limits below 9.0 psi will go into effect for nonattainment areas only. Both the urban bus and gasoline volatility provisions are proposed to conform current EPA regulations with the requirements of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990.

DATES: EPA will conduct a public hearing on this Notice of Proposed Rulemaking on June 17, 1991. Comments on this proposal will be accepted until July 17, 1991. Additional information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: The public hearing will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI. The public hearing will begin at 10 a.m. and will continue until such time as all testimony has been presented. The hearing will be recorded and a transcript of the hearing will be placed in the Public Docket. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-91-06 at the address given below.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A-91-06. Public Docket No. A-85-21, established in support of the previous volatility rulemakings, Public Docket No. A-84-07, established in support of the previous heavy-duty exhaust standards, and Public Docket No. EN-87-02, established in support of the previous heavy-duty noncompliance penalty rulemaking also contain considerable background information. Each of these dockets is referenced in Public Docket No. A-91-06. These dockets are located in Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The dockets may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB-12), Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Background

This section presents a brief overview of the background information pertinent to this action. It describes the 0.10 g/BHP-hr urban bus standard (40 CFR 86.091) and the gasoline volatility regulations (40 CFR 80.27 *et seq.*). It also describes the amendments to the CAA that required the changes to those regulations proposed today. Finally, this section summarizes two petitions to which EPA, by this notice, is responding in light of the changes required by the new CAA. The proposals summarized are as follows: One received by EPA on February 16, 1989 from the American Public Transit Association requesting a three-year delay (from 1991 to 1994) in the particulate emission standard for urban buses; and one received on August 8, 1990 from the National Council of Farmer Cooperatives requesting that the sub-9.0 psi RVP controls not be applicable in attainment areas.

A. Regulatory History

1. Urban Bus Particulate Matter Emissions Standards.

On March 15, 1985 (50 FR 10606), EPA promulgated regulations which included emissions standards for particulate matter from urban buses. In the case of particulate emissions from heavy-duty diesel engines, EPA specified standards of: (a) 0.60 g/BHP-hr applicable to all heavy-duty diesel engines (HDDEs) effective with the 1988 model year, (b) 0.10 g/BHP-hr for HDDEs used in urban buses and 0.25 g/BHP-hr for all other HDDEs effective with the 1991 model year, and (c) 0.10 g/BHP-hr for all HDDEs effective with the 1994 model year.

In the final rule establishing emission standards for methanol-fueled vehicles and engines (54 FR 14426), EPA expanded the scope of the gasoline-fueled and diesel-fueled standards to include methanol-fueled engines operating on the Otto and Diesel engine-cycles. The particulate emission standards established in that rulemaking for methanol-fueled diesel-cycle heavy-duty engines were the same as those described above.

2. EPA Gasoline Volatility Program.

As part of a final rule published March 22, 1989 (54 FR 11868), EPA established maximum volatility levels for gasoline sold during the summertime beginning in 1989 (Phase I). EPA later promulgated a second phase of more stringent volatility controls on June 11, 1990 (55 FR 23658) (Phase II) which is scheduled to take effect in the summer of 1992. The second phase of volatility controls set monthly RVP requirements for each state based upon many factors including, for example, its meteorological conditions. Generally, under Phase II the maximum allowable RVP of gasoline sold in northern states was set at 9.0 psi and the maximum allowable RVP of gasoline sold in southern states was set at 7.8 psi. Both the Phase I and Phase II regulations set a control period of May 1 through September 15 applicable to refiners, importers, distributors, resellers, carriers, and ethanol blenders. For retailers and wholesale purchaser-consumers, however, the RVP controls apply from June 1 through September 15.

The Phase I and Phase II regulations also contained a one psi increase in the maximum allowable RVP for fuel which contained between 9 and 10 percent ethanol and met other specified conditions. Finally, the regulations contained enforcement provisions including provisions establishing liability, and defenses to such liability, for violations of the standards.

B. Clean Air Act Amendments of 1990

Pursuant to the Clean Air Act Amendments of 1990,[1] Congress

[1] Pub. L. No. 101-549, enacted November 15, 1990.

amended the Clean Air Act to include specific language pertaining to urban bus particulate emissions and gasoline volatility. Section 202(f) [2] specifies a particulate standard of 0.25 g/BHP-hr for 1991 and 1992 model year buses. That section also requires a particulate standard of 0.10 g/BHP-hr for all 1993 and later model year buses. Since the 0.10 g/BHP-hr particulate standard is currently required for model year 1991 and later urban buses under 40 CFR 86.041, this section mandated a 2 year delay of the current standard for urban buses. Section 219 of the CAA contains standards for later model year urban buses. Today's proposal deals only with the two year delay requirement of the Act for urban buses; the nature of the 1993 bus standard and the 1994 urban bus standard are not relevant issues to this rulemaking. The delay is being handled separately in order to expedite completion of today's proposal, which directly impacts 1991 urban buses.

Section 211(h) of the CAA requires that EPA promulgate regulations establishing a maximum RVP of 9.0 psi for gasoline introduced into commerce during the high ozone season. This standard is to apply in the 48 contiguous States and the District of Columbia beginning in the summer of 1992. It further provides that EPA shall promulgate a more stringent RVP limit for ozone nonattainment areas if EPA finds such a standard is necessary to achieve comparable evaporative emissions reductions, on a per vehicle basis, in such areas. EPA may not make it unlawful to market sub-9.0 psi RVP gasoline in ozone attainment areas, except those previously designated as ozone nonattainment areas. The current Phase II regulations set the maximum allowable RVP of gasoline on a state-wide basis, and set the volatility of gasoline in many southern states at 7.8 psi. Thus, the regulations prohibit, in certain attainment areas, the sale of gasoline with an RVP of 9.0 psi. Today's proposal would raise the RVP limit to 9.0 psi in all attainment areas where it is not currently set at that level. The CAA specifies that regulations implementing the legislative requirements for RVP are to be effective no later than the 1992 high ozone season. The CAA also provides a one psi allowance for certain ethanol blends and creates a defense to liability for exceeding that standard for ethanol blenders, distributors, marketers, resellers, carriers, retailers or wholesale purchaser-consumers.

[2] Section 207(b) of the Clean Air Act Amendments of 1990 amends section 202 by adding a new section 202(f). However, the current section 202(f) in the CAA was not omitted by the amendments. Section 202(f) will be used in this NPRM to refer solely to the new subsection added by section 207(b) of the amendments.

C. Petitions

As noted earlier in this preamble, EPA has received petitions for regulatory changes in the same two areas covered by today's proposal. The American Public Transit Association (APTA) petition requested that the 0.10 g/BHP-hr standard for urban buses be delayed to coincide with implementation of the standard for all other HDDEs (i.e., 1994). The main points made by APTA in support of its petition were: (a) That complying diesel-fueled buses would not be available in 1991, (b) that even if complying alternative-fueled buses were available in 1991, costs would be prohibitive due to the need for the construction of fueling facilities and because of reduced fuel economy and perhaps durability of alternative-fueled engines, and (c) that only very small, or perhaps even negative, environmental benefits would result from retaining the 0.10 g/BHP-hr standard for urban buses in 1991.

The National Council of Farmer Cooperatives (NCFC) petition requested that the RVP controls promulgated in the second phase of volatility controls be revised upward to 9.0 psi for all ozone attainment areas. The main argument made in favor of this change was that producing 7.8 psi gasoline for attainment areas was not cost-effective for producers or consumers. They also argued that such a broadly enforced requirement might create pressure on the pipelines to require 7.8 psi fuel nationwide which they claimed EPA itself did not believe would be cost-effective.

Before EPA was able to take final action on either the APTA or NCFC petition, the issues raised therein were taken up by Congress as part of the debates regarding amendments to the Clean Air Act. During the course of those debates, and presumably in response to them, APTA itself changed aspects of its position. EPA believes that Congress in its deliberations fully considered the issues raised by APTA and NCFC. Congress enacted specific measures regarding the particulate standard for urban buses and gasoline RVP control in attainment areas and EPA believes implementing the changes directed by Congress is a satisfactory resolution of the concerns raised by APTA and NCFC. For this reason EPA plans no action beyond this rulemaking in response to either of these petitions.

II. Content of the Proposal

A. Urban Bus Particulate Matter Emissions Standards

Today's notice proposes a particulate emission standard of 0.25 g/BHP-hr for all 1991 and 1992 model year heavy-duty diesel engines used in urban buses. The 0.10 g/BHP-hr particulate emissions standard for heavy-duty diesel engines used in urban buses currently in place is being delayed until model year 1993. The standard will be implemented in the same manner as previous heavy-duty standards, including without limitation the averaging, trading and banking program under 40 CFR Parts 86.091–15 and 86.094–15, and the heavy-duty exhaust test procedures under 40 CFR Subpart D. EPA believes that this is consistent with the CAA.

The delay of the 0.10 g/BHP-hr particulate standard from the 1991 to the 1993 model year affects the petroleum-fueled urban bus particulate non-compliance penalty (NCP) promulgated under the NCP III Final Rule (55 FR 46622, November 5, 1990; 40 CFR 86.1105–87). EPA proposes that the NCPs and NCP parameters applicable to 1991 and future model year petroleum-fueled heavy-duty diesel engines not used in urban buses shall now be applied to model year 1991 and 1992 heavy-duty engines used in urban buses. This is appropriate since, due to the proposed changes, particulate emission requirements are now the same for both categories. It also conforms to historical NCP practices since urban buses and other heavy-duty engines had been treated the same for NCPs until the standards for the engines were set at different levels.

A revised NCP is also being proposed for the 1993 petroleum-fueled urban bus particulate standard at this time. Even though the 0.10 g/BHP-hr standard is unchanged, EPA believes that the new circumstances require that the upper limit for NCP availability and the values of the NCP parameters be revised because of the delay. The upper limit for NCP availability is intended to be set at the previous standard for that class of engines. At the time of the Phase III rulemaking, the previous PM standard for urban bus engines was the 1988 heavy-duty PM standard of 0.60 g/BHP-hr, and the upper limit was therefore set at 0.60 g/BHP-hr. Since the standard previous to the 1993 urban bus PM standard is the 1991 heavy-duty diesel PM standard of 0.25 g/BHP-hr, the upper limit is proposed to be changed from 0.60 to 0.25 g/BHP-hr.

Additionally, the fact that the previous PM standard is now 0.25 and

not 0.60 g/BHP-hr affects the values of the NCP parameters. During the NCP Phase III rulemaking, the average incremental cost of compliance (COC_{50}) and the ninetieth percentile incremental cost of compliance (COC_{90}) were based on the average and high cost for urban bus manufacturers to lower the PM emissions of their engines from 0.60 to 0.10 g/BHP-hr. Since urban bus manufacturers must now lower emissions from 0.25 to 0.10 g/BHP-hr the cost estimates are proposed to be changed to reflect the different reduction in emissions. During the NCP Phase III rulemaking, the petroleum-fueled urban bus PM NCPs were technologically based on an urban bus manufacturer reducing engine-out emissions from 0.60 to 0.25 g/BHP-hr through the use of engine modifications and then lowering emissions from 0.25 to 0.10 g/BHP-hr through the use of trap technology (see Docket EN–87–02, Item III–B–1, page 4). During the NCP Phase III rulemaking, the cost of adding a trap to an average petroleum-fueled urban bus engine was estimated to be $4,020 and the cost of adding a trap to a high cost petroleum-fueled urban bus engine was estimated to be $4,535 (see Docket EN–87–02, Item IV–B–1, pages 4 to 8). Trap technology remains a likely candidate for technology to meet the new standard, therefore, EPA is proposing to continue basing the urban bus NCP on the use of traps. EPA also proposes to use the same trap cost estimates developed during the NCP Phase III rulemaking since no better estimates are available.

Therefore, COC_{50} and COC_{90} are proposed to be changed to $4,020 and $4,535, respectively. The average marginal cost of compliance in dollars per emission unit reduction (MC_{50}) is proposed to remain $22,971 per g/BHP-hr because the marginal cost of adding the least cost effective piece of hardware is still the marginal cost of adding a trap. Since trap technology is still being used as the benchmark for these calculations, the factor used to calculate the ninetieth percentile marginal cost of control from the average marginal cost of control (F) will remain 1.2. The factor used to determine the engineering and development component of the NCP for refund purposes is proposed to be changed to 0.02 to reflect the portion of the new COC_{50} which is attributed to fixed costs.

B. EPA Gasoline Volatility Program

1. Standards

EPA researched the environmental need for volatility controls as part of the Phase II rulemaking completed in June, 1990. As detailed in that analysis, EPA demonstrated that certain areas need lower RVP gasoline to achieve vehicle evaporative emissions comparable to those achieved using 9.0 psi fuel in other, cooler, parts of the nation. The areas which require sub-9.0 psi fuel are those in which high temperatures combine with high volatility gasoline in vehicle fuel tanks to create substantially higher per vehicle volatile organic compound emissions.

The CAA, however, has limited EPA's authority to set gasoline volatility levels below 9.0 psi. EPA may set such an RVP standard only for ozone nonattainment areas and former ozone nonattainment areas. For nonattainment areas, EPA is required to establish an RVP standard more stringent than 9.0 psi as EPA finds "necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors." (Section 211(h)(1)) EPA reviewed all of these issues in promulgating the Phase I and Phase II volatility controls. The determinations made therein regarding per vehicle emissions and need for attainment are still valid under the new scheme. The total compliance costs are lower under the new scheme than under the current regulatory program and enforcement, while changed, is not made substantially more difficult.

Based on that information, EPA now believes the regulations promulgated previously conform to the new statute except with respect to warmer attainment areas. Thus, the only change to the volatility standards proposed in this rule is the elimination of federal sub-9.0 psi requirements for those areas where EPA no longer has the authority to adopt such levels. More specifically, EPA proposes that the RVP limit for gasoline be 9.0 psi in all areas not designated ozone nonattainment after publication of the redesignations required by section 107(d)(4)(A)(ii) of the Clean Air Act [3] (that is, in all areas designated attainment or unclassifiable for ozone after such rulemaking). (Designations are codified in volume 40 of the Code of Federal Regulations (CFR) Part 81.)

The federal RVP limit for gasoline sold in areas designated ozone nonattainment pursuant to such designation shall remain at the level determined in the second phase of volatility controls for states containing nonattainment areas. This means that sub-9.0 psi RVP gasoline will be required only in areas which are currently designated nonattainment for ozone (or those designated nonattainment in the upcoming rulemaking, as noted above) and which are in states with a 7.8 psi RVP standard pursuant to the Phase II final rule (55 FR 23659, June 11, 1990).

New section 211(h) provides EPA with the authority to set an RVP limit of less than 9.0 psi for former nonattainment areas that have been redesignated attainment under the Clean Air Act, that the area is capable of maintaining areas. In order for a nonattainment area to be so redesignated, revised section 107(d)(3) of the CAA requires the state to make a showing, pursuant to Section 175A of attainment for 10 years. Since such a showing may well include continuation of the RVP control program, EPA believes that it is appropriate to consider whether to continue volatility control below 9.0 psi at such time. Whenever an attainment area becomes a designated ozone nonattainment area after the Section 107(d) redesignations described above, the 9.0 psi RVP limit shall remain in effect unless EPA promulgates a lower RVP standard in a separate rulemaking.

As stated in the preamble for the Phase II volatility controls (55 FR 23660, June 11, 1990), EPA will rely on states to initiate changes to the EPA program which they believe will enhance local air quality and/or increase the economic efficiency of the program, within the statutory limits. The process, as described in that rulemaking, would be generally as follows. If states desire the EPA program to be adjusted to respond to localized issues, one or two options are available, depending on the nature of the change. For cases where a state desires to increase the stringency of the standard in a nonattainment area, CAA section 211(c)(4) provides a mechanism for states to adopt such a state program as a revision to their State Implementation Plan (SIP) for ozone.

It is also possible that a state may identify the existence of localized impacts for which it may be appropriate to make minor changes in the EPA

[3] Under section 107(d)(4) each Governor must, within 120 days of enactment of the Clean Air Act Amendments of 1990, submit a list to EPA that designates the status of all areas of the state as either attainment, nonattainment, or unclassifiable, with respect to the NAAQS for ozone. Within 120 days after that date, EPA must promulgate such designations, making any appropriate modifications. By July 15, 1991 there will therefore be a complete, current designation of the attainment status of all areas covered by the RVP regulations. EPA does not expect that section 107(d)(4)(A)(ii) will result in a substantial change in the number or identity of areas designated as nonattainment. Most, if not all, areas currently designated as nonattainment are expected to continue in that status, with the expected addition of several new areas.

program to be more or less stringent in some month or months. In such a case, a state may petition the Administrator to amend the applicable standard for an area, within the statutory constraints. If EPA determines to revise its regulations, such changes will be made through a rulemaking process. Because of the broad potential effects and diversity of interested parties in matters related to RVP control, a state should make any request to EPA for revised standards through the governor (or the governor's designee). In such a request, EPA would look for documentation of the local economic impact and, in the case of a request for a less stringent standard, for an indication that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS.

2. Ethanol Blends

EPA's current regulations provide that certain blends of gasoline and ethanol violate the RVP standard only if their volatility exceeds the applicable standard by more than one psi. 40 CFR 80.27(d) (1), (2), and (3). To qualify for this 1 psi allowance, an ethanol blend has to meet certain conditions—the blend has to contain between 9 and 10 percent ethanol (by volume), the maximum ethanol content cannot exceed any applicable waiver condition under section 211(f)(4) of the CAA, and the ethanol blend must be marketed in accordance with certain specified requirements. These requirements are that retail pumps dispensing the blend be labeled as to alcohol content, and that invoices, loading tickets, and similar documents which accompany the blend must contain a statement that the gasoline being shipped contains ethanol. These documents must be retained for at least one year, and are subject to inspection by the Agency.

Section 211(h)(4) of the CAA establishes a one psi RVP allowance for fuel blends containing gasoline and 10 percent denatured anhydrous ethanol. EPA proposes to revise its regulations to include use of denatured and anhydrous ethanol as a specific condition for the one psi allowance. However, EPA is not proposing any change to the current requirement that the blend contain between 9 and 10 percent ethanol (by volume) to obtain the one psi allowance. EPA believes this is consistent with Congressional intent.

First, the legislative history indicates that Congress envisioned continuation of the 9 to 10 percent requirement. Section 216 of the Clean Air Act Amendments as passed by the House of Representatives [4] also established a one psi allowance for blends of gasoline and ethanol which contained "at least 10 percent ethanol." In discussing this requirement, the House Committee on Energy and Commerce stated that EPA "regulations shall permit gasoline containing at least 9 but not more than 10 percent ethanol (by volume) to exceed the volatility requirements by up to 1.0 pounds per square inch." [5] There is no indication that Congress intended a different result through the language finally adopted.

In addition, interpreting this provision to provide a one psi allowance only if the blend contains exactly 10 percent ethanol would place a next to impossible burden on ethanol blenders. Compliance with the conditions of a fuel waiver under section 211(f)(4) of the CAA requires that the ethanol portion of the gasoline blend cannot lawfully be any greater than 10 percent (by volume). Congress was clearly aware of such waiver conditions, as they are referenced in section 211(h). The nature of the blending process itself (including filling procedures and the use of denaturing additives), further complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol. EPA believes that Congress did not intend to require, as a condition to the one psi allowance, that blenders have absolutely no margin of safety for lawful compliance with section 211(f)(4) waiver conditions, given the practical difficulties involved in the blending process. Therefore, EPA is not proposing any changes to its current requirement that ethanol blends contain between 9 and 10 percent ethanol.

Finally, a new defense against liability for violation of the ethanol blend RVP requirements is included in this package as required by the CAA. This defense is for a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer who can demonstrate that the gasoline portion of an ethanol blend meets the applicable RVP standard, that the ethanol does not exceed its waiver condition under section 211(f)(4), and that no additional alcohol or other additive has been added to increase the volatility of the ethanol portion of the blend. This defense will provide protection from liability if the volatility of an ethanol blend exceeds the exemption standard when all requirements of the statute have been met. EPA believes that this statutorily mandated defense is in addition to and does not supersede any of the defenses currently contained in the regulations.

In accordance with the statutory language, EPA proposes that a party may demonstrate the elements of the new defense by production of a certification from the facility from which the gasoline was received. EPA believes the defense established in section 211(h)(4) is limited to ethanol blends which meet the 9 to 10 percent requirement in the regulations. Thus a certificate which otherwise meets the requirements of the regulations does not establish a defense for gasoline containing ethanol outside these percentages.

EPA is not proposing a requirement that upstream parties produce such certificates to downstream parties, and believes this is consistent with the holding in *National Tank Truck Carriers v. EPA*, 907 F.2d 177 (D.C. Cir. 1990). In that case the court invalidated one element of a defense which required the production of certain documentation when the upstream parties were not required to produce such documentation to the carriers. The regulation before the court in National Tank was not based on a statutory defense, and was the only defense available to the carrier. Here the defense is based on specific statutory terms which do not on their face require upstream parties to produce such certificates. In addition, the statutory defense is not the only defense available to violators. As previously discussed, all the defenses currently in EPA's regulations are still available and are not superseded by section 211(h)(4). EPA therefore believes that the proposed defense based on a certificate does not in any way run counter to the court's holding in National Tank.

Today's proposal specifies when a certification will be considered acceptable to the Administrator for purposes of establishing the statutory defense. The language used in section 211(h)(4) indicates Congress meant to provide discretion for the Administrator to determine what evidence, including certifications, would be acceptable in establishing this defense. There is also no indication Congress meant to insulate persons from liability based solely on a paper certification which only repeats the words of the statute. EPA has therefore tried to define those reasonable circumstances when the regulated community can properly rely on a certification, thus providing a reasonable defense as envisioned by Congress.

[4] S.1630, as passed by the House of Representatives on May 23, 1990.

[5] H.R. Rep No. 101-490, 101st Cong., 2d Sess. 312 (1990).

Under today's proposal the certifications will have to contain the information called for in the statute, and must have been supplied by the facility from which the gasoline was received. For retailers or wholesale purchaser-consumers, a defense based on certifications will be accepted only if all the gasoline found in the storage tank which is in violation at the facility when a violation is detected is covered by such certifications. For distributors, ethanol blenders, resellers and carriers alleged to be in violation, a certification will be accepted as a defense to such violation only if it is supported by evidence of an ongoing program to verify the accuracy of such certifications, such as a periodic sampling and testing program conducted by such person or on the facility's behalf. In addition, no certification will be accepted if the party at whose facility the violation is detected has reason to believe the certification is not accurate.

In effect, production of an acceptable certification or certifications replaces one element of a defense under EPA's current regulations, the requirement that a party prove he or she did not cause the violation. A party, however, is not limited to providing such certification to meet the statutory defense. The party may also demonstrate the statutory defense elements by other evidence acceptable to the Administrator, as provided in the statute. EPA would evaluate such other evidence on a case by case basis to determine whether it is sufficient to establish that the defense elements have been met.

EPA is also proposing to delete the current pump labeling and document statement conditions to the one psi allowance for ethanol blends under § 80.27(d)(3). EPA believes that these additional requirements are not appropriate under the statute, which specifically provides that the one psi allowance applies to blends containing 10% denatured anhydrous ethanol, without further conditions. However, EPA proposes to add a new § 80.27(d)(3), requiring marketing documents to contain a statement regarding the ethanol content of the gasoline; and a new § 80.27 (d)(4), requiring pump labeling. These requirements would not be conditions of the waiver; rather, they are independent requirements for the purpose of facilitating EPA's sampling and testing process and ensuring that ethanol products are not mixed with other products resulting in high RVP gasoline.

3. Regulatory Control Period and Regulated Parties

EPA is not proposing any structural changes to the enforcement periods or timing contained in the regulations. For the earlier volatility rulemaking, EPA studied in detail the timing of high ozone conditions, the nature of gasoline distribution systems and the best procedure for ozone control given these parameters.

The statute requires that marketers and blenders be included as regulated parties. EPA believes that under the existing regulations they are already treated as regulated parties.

Finally, the statute prohibits the introduction into commerce of high RVP gasoline by "any person" during the high ozone season. EPA s current regulations cover a wide variety of persons involved in the production, distribution, and sale of gasoline, but are limited to these designated parties. Current regulations do not include, for example, the typical retail purchaser of gasoline. New section 211(h) is therefore broader in scope than EPA's current regulations. To conform to the statute, EPA proposes to expand the group of regulated parties during the high ozone season to include any person.

The regulatory control period will stay as under Phase II volatility control: May 1 through September 15. Additionally, as under the Phase II program "[e]enforcement is delayed until June 1 at the beginning of the control season for end-users [retail outlets, wholesale purchaser-consumer and other consumers] to prevent outlets with slower turnover from needing advance supplies of RVP controlled gasoline from suppliers over which they often have little control" (June 11, 1990; 55 FR 23659). Thus the "high ozone season" statutory prohibitions on all persons apply June 1 to September 15 but EPA has retained control over suppliers from May 1 through June 1. EPA believes that this regulatory scheme best ensures the gasoline is available when needed without unnecessary burdens on small retailers.

III. Environmental Impact

A. Urban Bus Particulate Matter Emissions Standard

For the two years, 1991 and 1992, during which new urban buses purchased and placed in service will be required to comply with a particulate emission standard of 0.25 g/BHP-hr rather than 0.10 g/BHP-hr, the increase in national urban diesel particulate emissions was estimated, based upon the Regulatory Impact Analysis prepared for the earlier rulemaking, to be no more than 70 tons in 1991 and 140 tons in 1992. Relative to the total urban diesel particulate inventory of approximately 70,000 tons, the overall effect will be small.

B. EPA Gasoline Volatility Program

The proposed changes in the volatility regulations are not expected to have a detrimental effect on the health of those living in the areas affected. The areas affected by the changes proposed today are already in attainment of the ozone standard without the benefit of sub-9.0 psi RVP fuel. Additionally, 9.0 psi gasoline itself has a lower volatility than gasoline at previous uncontrolled volatility levels.

IV. Economic Impact

A. Urban Bus Particulate Matter Emission Standard

Changes in bus particulate emissions standards contained in this action could impact new vehicle price and perhaps vehicle operating costs due to changes in fuel economy and maintenance requirements. The relaxed standard will permit lower costs for the bus engine manufacturers in model years 1991 and 1992. Although it was earlier assumed that trap oxidizers would be used to meet the 0.10 g/BHP-hr, it is currently unclear what technology would have been used to meet the standard in 1991. It is therefore also unclear exactly how much savings will be realized due to this proposed change. However, for a trap-equipped bus, the savings could exceed several thousand dollars per bus.

B. EPA Gasoline Volatility Program

EPA believes that the economic effects of the proposed changes in the volatility regulations will be small. As fully discussed in the rulemaking for the Phase II volatility controls, it may be more economical for large refineries to market gasoline with only one RVP in a limited geographical area. This reduced cost derives from the simplification which results from only having to produce, store and distribute one type of product. Therefore, some refiners may continue to make 7.8 psi RVP fuel for attainment areas in a given geographic area if 7.8 Psi RVP fuel is required in adjacent nonattainment areas. Those refiners marketing 9.0 psi RVP fuel will realize a cost savings of approximately 1.1 cents per gallon if they no longer have to make 7.8 psi fuel. EPA does not believe any great overall change in refinery operations or costs will occur as a result of this regulation. Any change will be positive for some refiners and should result in lower costs to their consumers.

The modified volatility program will have somewhat improved cost effectiveness. The cost effectiveness analysis performed for the original two volatility rulemakings was aimed at nonattainment areas. Although a slight benefit was included for attainment areas, the great majority of the benefit was in nonattainment areas. This benefit will still be fully experienced under this new scheme. Cost savings in areas with a relaxed standard would more than offset the loss of benefits, resulting in a better overall cost effectiveness.

V. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket, Docket No. A–91–06 [see **"ADDRESSES"**].

Any person desiring to testify at the public hearing [see **"DATES"**] should notify the contact person listed above at least seven days prior to the day of the hearing. Persons wishing to testify at the hearing should also provide an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, a sign-up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket, Docket No. A–91–06 [see **"ADDRESSES"**].

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VI. Statutory Authority

The statutory authority for the standards proposed today is granted to EPA by sections 202, 206, 211, 114 and 301(a) of the Clean Air Act, as amended.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The two elements of this rulemaking package, individually and together, do not constitute major rules according to the established criteria. In fact, as discussed above, the elements of this rulemaking package will reduce the cost of compliance with already existing rules for certain industrial sectors. Therefore, I have determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

VIII. Compliance With the Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the new PM standards since few of the vehicle manufacturers which will be affected by these regulations are small business entities and any effect of this regulation would be beneficial. The changes in the volatility controls may have a significant beneficial impact on some smaller gasoline refiners. For these reasons, I certify that the rules contained in this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

IX. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This proposed rule does not create any new information requirements or contain any new information collection activities.

X. List of Subjects in 40 CFR Parts 80 and 86

Administrative practice and procedures, Air pollution control, Environmental protection, Motor vehicle and motor vehicle engines, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

APPENDIX—TABLE OF CHANGES PROPOSED TO BE TO VARIOUS SUBPARTS OF 40 CFR

Section	Change	Reason
1. Part 80 Authority	None	
2. § 80.2 (cc), (dd) and (ee)	Add definitions for ethanol, designated attainment area and designated nonattainment area.	Implement CAAA of 1990.
3. § 80.27 (a), (d)(2) and (d)(3)	Revise paragraphs	Change regulatory requirements to conform to CAAA of 1990.

APPENDIX—TABLE OF CHANGES PROPOSED TO BE TO VARIOUS SUBPARTS OF 40 CFR—Continued

Section	Change	Reason
4. § 80.28 (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and (g)(8).	Revise paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), and (f)(4), and add paragraph (g)(8).	Add new defense.
5. Part 86 Authority	Add references to section 205 and 216	Correct typographical error.
6. § 86.091-11 (a)(1)(iv)(A) and (a)(1)(iv)(B)	Revise paragraphs	Omit 1991 urban bus particulate standard of 0.10g/BHP-hr.
7. § 86.093-11	Add § 86.093-11	Add 1993 urban bus particulate standard of 0.10g/BHP-hr.
8. § 86.1105-87 (c), (d) and (e)	Revise § 86.1105-87 (c) and (d); add § 86.1105-87(e)	Change NCPs to reflect new standards.

For the reasons set forth in the preamble, parts 80 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301 (a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.2 is proposed to be amended by adding new paragraphs (cc), (dd) and (ee) to read as follows:

§ 80.2 Definitions

* * * * *

(cc) *Ethanol* means denatured anhydrous ethyl alcohol.

(dd) *Designated Nonattainment Area* means an area designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to section 107(d)(4)(A)(ii) of the Clean Air Act.

(ee) *Designated Attainment Area* means an area not designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to section 107(d)(4)(A)(ii) of the Clean Air Act.

3. Section 80.27 is proposed to be amended by revising the non-chart portion of paragraph (a), and all of paragraphs (d)(1) and (d)(3) and by adding paragraph (d)(4) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a)(1) *Prohibited activities in 1991.* During the 1991 regulatory control periods, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means the standard listed in this paragraph for the geographical area and time period in which the gasoline is intended to be dispensed to motor vehicles or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is being sampled. As used in this section and § 80.28, "regulatory control periods" mean June 1 to September 15 for retail outlets and wholesale purchaser-consumers and May 1 to September 15 for all other facilities.

(2) *Prohibited activities in 1992 and beyond.* During the 1992 and later high ozone seasons no person, including without limitation, no retailer or wholesale purchaser-consumer, and during the 1992 and later regulatory control periods, no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means:

(i) 9.0 psi for all designated attainment areas, and

(ii) The standard listed in this paragraph for the state and time period in which the gasoline is intended to be dispensed to motor vehicles for any designated nonattainment area within such State or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. Designated attainment and designated nonattainment areas and their exact boundaries are described in 40 CFR part 81, or such part as shall later be designated for that purpose. As used in this section and § 80.28, "high ozone season" means the period from June 1 to September 15 of any calendar year and "regulatory control period" means May 1 to September 15.

* * * * *

(d) * * *

(1) Any gasoline which meets the requirements of paragraph (d)(2) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch (1.0 psi).

* * * * *

(3) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies a shipment of gasoline containing ethanol shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol.

(4) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol.

4. Section 80.28 is proposed to be amended by revising paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and by adding a new paragraph (g)(8) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(b) * * *

(1) The carrier, except as provided in paragraph (g)(1) or (g)(8) of this section; and

* * * * *

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(c) * * *

(1) The distributor or reseller, except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(d) * * *

(1) The distributor, except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(e) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(f) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(g) * * *

(8) In addition to the defenses provided in paragraphs (g)(1) through (g)(6) of this section, in any case in which an ethanol blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraph (b), (c), (d), (e) or (f) of this section, as a result of gasoline which contains between 9 and 10 percent ethanol (by volume) but exceeds the applicable standard by more than one pound per square inch (1.0 psi), the ethanol blender, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which the gasoline was received or other evidence acceptable to the Administrator, that:

(i) The gasoline portion of the blend complies with the Reid vapor pressure limitations of § 80.27(a); and

(ii) The ethanol portion of the blend does not exceed 10 percent (by volume); and

(iii) No additional alcohol or other additive has been added to increase the Reid vapor pressure of the ethanol portion of the blend.

In the case of a violation alleged against an ethanol blender, distributor, reseller, or carrier if the demonstration required by paragraphs (g)(8) (i), (ii), and (iii), of this section is made by a certification, it must be supported by evidence that the criteria in paragraphs (g)(8) (i), (ii), and (iii) of this section have been met, such as an oversight program conducted by or on behalf of the ethanol blender, distributor, reseller or carrier alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification shall be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or wholesale purchaser-consumer facility, such certification shall be deemed an adequate defense for the retailer or wholesale purchaser-consumer, provided that the retailer or wholesale purchaser-consumer is able to show certificates for all of the gasoline contained in the storage tank found in violation, and, provided that the retailer or wholesale purchaser-consumer has no reasonable basis to believe that the facts stated in the certifications are inaccurate.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINE: CERTIFICATION AND TEST PROCEDURES

5. The authority citation for part 86 is revised to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601 (a).

6. Section 86.091–11 of subpart A is proposed to be amended by revising paragraphs (a)(1)(iv)(A) and removing and reserving paragraph (a)(1)(iv)(B) to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines.

(a)(1) * * *

* * * * *

(iv) *Particulate* (A) For all diesel engines, including those to be used in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule) as measured under transient operating conditions.

(B) [Reserved]

* * * * *

7. A new § 86.093–11 of subpart A is proposed to be added to read as follows:

§ 86.093–11 Emission standards for 1993 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1993 and later model year diesel heavy-duty engines shall not exceed the following:

(i)(A) *Hydrocarbons (for petroleum-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(B) *Organic material hydrocarbon equivalent (for methanol-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(iii) *Oxides of nitrogen.* (A) 5.0 grams per brake power-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of the programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) *Particulate.* (A) For diesel engines to be used in urban buses, 0.10 grams per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(B) For all other diesel engines only, 0.25 grams per brake horsepower-hour (0.093 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.25 gram per brake horsepower-hour (.093 gram per megajoule) for diesel engines

used in urban buses or 0.60 gram per brake horsepower-hour (0.22 gram per megajoule) for other diesel engines. This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules as set forth in paragraph (f)(2) of Appendix I of this part, and measured and calculated in accordance with the procedures set forth in subpart N of this part, except as noted in § 86.091–23(c)(2)(i) and (iii).

(b)(1) The opacity of smoke emission from new 1993 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(3) *Evaporative emissions* (total of non-oxygenated hydrocarbons plus methanol) for 1993 and later model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed:

(i) For vehicles with Gross Vehicle Weight Rating of up to 14,000 lbs., 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs., 4.0 grams per test.

(4)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs., the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emission collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standard set forth in paragraph (b)(3)(ii) of this section refers to the manufacturers' engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1993 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) and (d) of this section.

8. Section 86.1105–87 of subpart L is proposed to be amended by revising paragraphs (c) and (d) and by adding paragraph (e) to read as follows:

§ 86.1105–87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following additional emission standards:

(1) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,480.

(*2*) COC_{90}: $1,513.

(*3*) MC_{50}: $5,833 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.07.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $905.

(*2*) COC_{90}: $2,169.

(*3*) MC_{50}: $7,083 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines including those to be used for urban buses:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $930.

(*2*) COC_{90}: $1,630.

(*3*) MC_{50} $22,500 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(2) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $830.

(*2*) COC_{90}: $946.

(*3*) MC_{50}: $1,167 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.12.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $905.

(*2*) COC_{90}: $1,453.

(*3*) MC_{50} $1,417 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $930.

(*2*) COC_{90}: $1,590.

(*3*) MC_{50}: $2,250 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(3) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $711.

(B) COC_{90}: $1,396.

(C) MC_{50}: $2,960 per gram per vehicle mile.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.01.

(d) Effective in the 1993 model year, NCPs will be available for the following additional emission standard:

(1) Petroleum-fueled diesel urban bus engine (as defined in § 86.091–2)

particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.093–11(a)(1)(iv)(A) in accordance with § 86.1113–87(a):

(A) COC_{50}: $4,020.

(B) COC_{90}: $4,535.

(C) MC_{50}: $22,971 per gram per brake horsepower-hour.

(D) F: 1.2.

(E) UL: 0.25 grams per brake horsepower-hour.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.093–11(a)(1)(iv)(A) in accordance with § 86.1113–87(h): 0.02.

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (c) and (d) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67.

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federal register

Wednesday
May 29, 1991

Part III

Department of Transportation

Federal Aviation Administration
14 CFR Part 158
Passenger Facility Charges; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 26385; Part 158(New)]

RIN No. 2120-AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule adopts new regulations to establish a passenger facility charge program. The rule implements sections 9110 and 9111 of the Aviation Safety and Capacity Expansion Act of 1990, enacted November 5, 1990, which requires the Department of Transportation to issue regulations under which a public agency may be authorized to impose an airport passenger facility charge (PFC) of $1, $2, or $3 per enplaned passenger at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance safety, capacity, or security of the national air transportation system, reduce noise from an airport that is part of such system, or furnish opportunities for enhanced competition between or among air carriers.

The rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection, handling, and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:

Availability of NPRM's and Final Rules

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Aviation Safety and Capacity Expansion Act of 1990 authorizes the Secretary of Transportation to approve local imposition of PFC's of $1, $2, or $3 per enplaned passenger and to use PFC revenue for approved projects. Section 9110 of the Act requires the Secretary to issue regulations necessary to implement this authority.

On November 14, 1990, the FAA issued a "Request for Data and Information; Passenger Facility Charges" (55 FR 47483) seeking information helpful in developing this rulemaking. The FAA asked specific questions concerning methods and practices involved in fee collection, handling, remittance, and audit/recordkeeping procedures related to airline passenger ticketing. Thirteen commenters responded to this request for data. The comments are available for inspection in the FAA Rules Docket, No. 26385.

Subsequently the FAA published a Notice of Proposed Rulemaking (NPRM) (56 FR 4678; February 5, 1991) inviting all interested persons to submit written comments, data, views, and arguments.

In addition to requesting written comments, the FAA held a public hearing on February 15, 1991, at FAA headquarters, to hear testimony from interested parties. In all, 18 people testified at the hearing.

On March 7, 1991, the FAA extended the comment period until March 18, 1991. The extension responded to a joint request for additional time from the Air Transport Association of America (ATA), the American Association of Airport Executives (AAAE), and the Airport Operators Council International (AOCI).

The FAA received comments on the NPRM from a wide representation of the aviation and financial communities. Approximately 200 separate responses were received in the docket. The major categories of commenters were airport owners, scheduled air carriers (foreign and U.S.), air taxi and air charter operators, airport concessionaires, car rental companies, state aviation agencies, bond underwriters and financial institutions, and various aviation industry trade associations. Private individuals and several members of Congress also commented on the proposal. The AAAE, ATA, and AOCI jointly submitted comments on the NPRM ("joint submission").

Due to the large number of comments received, not every comment is individually addressed in this preamble, although all have been considered. Many of the less complex suggestions are accommodated by revisions in the final rule but not expressly discussed. In other cases, comments are grouped together with others regarding the same issue. The FAA has considered all comments received. However, this document will not generally address comments that request provisions already in the NPRM and unchanged in the final rule.

The procedures and requirements contained in the NPRM were intended to ensure compliance with the statute. This approach paralleled the AIP grant process to some degree, and many commenters indicate such a process would be excessive and burdensome. Many commenters argue that PFC revenue is local money, not federal, that restrictive procedures are unwarranted, and that the airport grant program should not be used as a model for this regulation.

The final rule is intended to provide public agencies with the flexibility to tailor their PFC programs to their own needs while meeting the requirements of the statute. In addition, it is intended to reduce the administrative burden as much as possible for public agencies and air carriers.

The final rule responds to the public agencies' desire to receive PFC revenue while environmental, airspace, and airport layout plan studies are being accomplished. Revenue collected prior to FAA approval of the project could be used, after approval is obtained to use the funds, to reimburse costs incurred during the project formulation period. It also could be accumulated so that financing needs for construction and other development will be partially (or fully) met when the project is ready for implementation. The final rule contains provisions for advance collection and safeguards to ensure that PFC revenue will be used only on approved projects. This issue is addressed more fully below. In contrast, the NPRM would have required all environmental, airspace and airport layout plan requirements be completed before an application could be submitted to impose a PFC.

Another change adding flexibility to the rule is a provision for public agencies to request that those classes of carriers providing less than one percent of the total annual passenger enplanements not be required to collect or remit PFC's at the airport. This is intended to give public agencies the

opportunity to reduce the administrative and financial burden associated with collecting PFC's from carriers whose operations would provide little PFC revenue. It would also reduce the burden on the carriers belonging to these classes.

Foreign carriers and U.S. carriers with international operations express concern about administrative costs and the legal authority of the U.S. to enforce the collection of PFC's outside the U.S. Thus, they recommend air carriers and foreign air carriers not be required to collect the PFC on such tickets. However, sales outside the U.S. represent a substantial number of U.S. enplanements, and, therefore, failure to collect PFC's on such tickets could account for a significant potential loss of revenue at some U.S. airports.

To accommodate these conflicting concerns, the final rule gives carriers the option of collecting PFC's only at the passenger's departure gateway. Air carriers and those foreign air carriers that serve a point or points in the U.S. will have three choices: (1) They may follow the regular collection procedure for U.S.-issued tickets; (2) they may collect PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or (3) they may collect at the time the passenger is last enplaned in the U.S.

Another major issue was carrier compensation. Under the NPRM, the only compensation to which the carrier would have been entitled was the interest earned on PFC revenue prior to remittance. Numerous comments were received on this issue. Most, but not all, agree that additional compensation for carriers is justified. The final rule provides for a specific fee per PFC collected in addition to the interest earned prior to remittance. In addition, the final rule reduces the remitting, reporting, and auditing burdens of collecting carriers.

A number of airport commenters and financial institutions argue that the NPRM did not sufficiently provide for use of PFC revenue to support project-related debt. A primary concern is that uncertainty created by the termination process proposed in the NPRM could lead to lower bond ratings and higher project financing costs. Changes in the final rule are intended to increase investor confidence in PFC-backed bonds, enhance the marketability of such bonds and, ultimately, reduce the amount of PFC revenue needed for interest and financing costs. While the final rule retains the Administrator's statutory authority to terminate a PFC, the process has been significantly revised to provide assurance to all parties that every effort will be made to resolve a problem before termination.

In addition, commenters note the NPRM did not specifically define debt service and bond financing costs as allowable costs reimbursable by PFC revenue. The definition of allowable cost is modified in the final rule to accommodate this concern.

A detailed discussion of the individual subparts in the regulation follows:

Subpart A

Subpart A contains the general provisions of the PFC rule including definitions, information on project eligibility, the authority to impose PFC's and certain limitations.

Section 158.3 Definitions

Several definitions in the NPRM generated numerous comments. After considering these comments, some definitions have been changed and other terms added. The following is a discussion of the significant departures from the NPRM.

Allowable cost. As proposed, allowable costs would have been those considered reasonable and necessary to accomplish the project, including formulation costs incurred before approval to impose a PFC. The comments express concern that this definition does not address debt related costs when PFC revenue is used to finance borrowing.

The final rule spells out allowable costs in more detail, and identifies debt service and bond financing by name as allowable costs. Allowable costs incurred after November 5, 1990, but prior to project approval, are reimbursable once the public agency receives project approval. A public agency's costs of administering its PFC program are also included in allowable costs.

This definition includes multi-phased projects listed in the airport capital plan. As noted in the NPRM, the FAA will retain the authority to do an independent review to determine what costs are reasonable and necessary. However, because a project may be financed entirely with PFC's or other local funds, the FAA would not ordinarily conduct the kind of detailed review associated with the AIP program. In addition, in the event of a dispute, the FAA will first look to local laws and procurement requirements and procedures for guidance in determining what costs are reasonable and necessary.

Approved project and project. The NPRM defined the term "project" to mean airport planning, land acquisition, noise compatibility measures and other such work to be undertaken with PFC revenue. Because of the need to differentiate projects for which approval has been granted to use PFC revenue from projects still under consideration or those for which only imposition of a PFC has been approved, the final rule includes two definitions, "approved project" and "project." As the name implies, an approved project is one that has received FAA approval under Subpart B of this part for use of PFC revenue. The term "project" is used to refer to all projects whether approved or contemplated.

Bond financing costs. A new term, bond financing costs are the costs associated with issuance, underwriting, credit enhancement and the other costs of incurring new indebtedness. It does not include the cost of debt service, which is defined separately. The financial community suggests that these costs do not ordinarily exceed 2 percent of the debt package, but the FAA will not impose a regulatory limit. If such costs prove to be excessive, the FAA has the authority to take action in the future.

Collecting carrier. The NPRM defined "issuing carrier" to mean an air carrier or foreign air carrier that issues a ticket or whose imprinted ticket stock is used by an agent. All PFC collection would have been accomplished by issuing carriers under the proposal. As discussed below, the final rule has been modified to permit collection of PFC's by other than issuing carriers. The new term "collecting carrier" is added to refer to carriers collecting PFC's whether or not such carriers issue the air travel ticket.

Debt service. This term refers to items normally associated with the payment of interest, principal and fees.

Exclusive long term lease or use agreement. The NPRM defined "long-term lease and use agreements" as those of 5 years or more. This definition implements the statutory prohibition on exclusive long-term leases of PFC-financed facilities. Some commenters suggest that all exclusive leases be prohibited, and others suggest the definition refer explicitly to exclusive long-term leases.

The final rule modifies the proposed definition by inserting the word "exclusive." The FAA did not adopt the suggestion that all exclusive leases be prohibited because the statute itself bars only long-term exclusive leases. A public agency may adopt a policy of permitting no exclusive lease or use agreements of any duration for PFC-financed facilities, but it is not required to do so.

Implementation of an approved project. This new definition reflects the separate approval process to impose a PFC and to use PFC revenue. As discussed more fully below, the authority to impose a PFC will expire or terminate if a public agency does not begin implementation of an approved project in a timely fashion. This definition specifies the actions required to effect implementation of various kinds of projects. For a construction project, issuance of a notice to proceed to the contractor or the physical start of construction is required. For other projects commencement of work by the contractor or public agency to carry out a statement of work is required. For property acquisition, implementation is defined as beginning the title search, surveying or appraisal for a significant portion of the property to be acquired.

One-way trip and round trip. One of the most difficult issues in this proceeding has been finding a way to meet the statutory limitation of collecting no more than two PFC's per one-way trip and two in each direction of a round trip. Most trips can be identified as one-way or round trips as those terms are commonly understood, however, about 15 percent of trips cannot. These include open-jaw trips (those that have identifiable outbound and return legs but that have different origin and termination points) and other trips. The NPRM incorporated an earlier airport trade association suggestion that the one-way trip be defined according to a "four-hour rule." It would have specified that after each scheduled stop between flights of more than four hours, a new one-way trip would start.

The joint submission and other commenters state that this proposed definition is inappropriate and difficult to use. Instead, the joint submission recommends the rule provide for collection of PFC's at the first four airports, regardless of whether the trip meets the ordinary understanding of "round trip." In the alternative, the joint submission requests the PFC be collected at the first two and last two airports imposing PFC's. According to the commenters, these systems, particularly the first alternative, would be easier and less costly for the carriers to implement.

While sympathetic to these concerns, the FAA is bound by the statutory language, which clearly prohibits the collection of more than two PFC's on a one-way trip and more than two in each direction on a round trip.

Therefore, the final rule defines a round trip as a trip where the passenger's itinerary terminates at the origin point. Other trips are considered one-way trips. This would include open jaw trips, as well as trips meeting the commonly understood meaning of one-way. On a one-way trip the carrier would collect PFC's for the first two enplaning airports imposing PFC's. On a round trip, the carrier would collect PFC's at the first two and last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made. The suggestion of collecting at the "first four" airports imposing a PFC could result in three or four charges on a one way trip, contrary to the statutory requirement.

Passenger enplaned. As proposed in the NPRM, "passenger enplaned" would have included passengers on board international flights that transit an airport within the continental United States for nontraffic purposes as is provided in the Airport and Airway Improvement Act of 1982 (AAIA). This category of passenger is excluded from the definition in the final rule. Without this change, passengers that transit an airport on a technical stop, such as for refueling or customs inspection, would be liable for payment of any PFC imposed at that airport. Such stops, however, are not shown on the passenger's ticket, a requirement for collection of the PFC. Additionally, the passenger is not "enplaned" at that airport as that term is generally interpreted.

State. The NPRM did not include a definition of State. This new definition has been added to the final rule to clarify that all territories and possessions of the United States that control commercial service airports may impose a PFC. Under the rule, a State is defined to include the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands and Guam.

Unliquidated PFC Revenue. The NPRM did not include a definition of this term and a number of commenters were unclear about what this term meant. The term is defined as PFC revenue received by the public agency but not yet used on approved projects.

Section 158.5 Authority To Impose PFC's. (Proposed: Authority to Impose PFC's)

As proposed, this section would have permitted a public agency controlling a commercial service airport to impose a $1.00, $2.00 or $3.00 PFC on passengers enplaned at the airport. It also would have prohibited states or political subdivisions of states not controlling such airports from imposing a PFC.

Comments: Some commenters recommend a uniform fee of $3.00, arguing the cost of programming automated systems would be as much as 24 percent less if only one amount were permitted to be collected. They also claim that there is a limited space on the automated ticket stock for individual PFC charges. The commenters also suggest the rule would be less confusing to the travelling public. However, some smaller airports indicate that they would not impose the maximum allowed PFC amount if they could impose a lesser amount.

Final rule: While the FAA recognizes the merit of these arguments, statutory language clearly permits airports to impose PFC's of $1.00, $2.00 or $3.00. Therefore, this section is unchanged from the NPRM. However, while the ticket will be required to indicate each PFC airport, only the total amount of PFC's collected must be shown on the ticket. This change should eliminate some of the burden on carriers of collecting a variable charge.

Section 158.9 Limitations. (Proposed: Limitation Regarding Passengers of Air Carriers Receiving Essential Air Service Compensation).

As proposed, this section would have prohibited the imposition of a PFC only on specific flights to an essential air service (EAS) point for which compensation was being paid. In addition, it would have required the compensated carrier to notify other carriers of these individual flights.

Comments: Several comments request the prohibition on PFC collection for these flights be removed, thereby allowing PFC's to be collected from all passengers enplaning at an airport imposing a PFC. The commenters also ask that if the limitation is retained, the Department of Transportation should provide a monthly list of those carriers compensated and the flight to EAS airports for which compensation is paid. Comments also point out carriers cannot always designate the specific flights for which EAS compensation is paid.

Final rule: The statute clearly prohibits airports from collecting PFC's on flights to EAS points over routes for which EAS compensation is paid. However, it is not possible to distinguish which flights by that carrier on a particular route are compensated. Therefore, the final rule, § 158.9(a), states that no PFC may be imposed on any flight to the eligible point (EAS airport) by a carrier serving a route for which EAS compensation is paid to that

carrier. Thus, in response to the comments, the final rule does not require compensated carriers to identify individual flights as those for which compensation has been received. However, a public agency may impose a PFC on passengers enplaned on any flight to an EAS point that operates over a route for which no subsidy is paid. This includes service over the subsidized route by a carrier not receiving EAS compensation in addition to service over other routes by any carrier.

In addition, the final rule is modified to eliminate the requirement that EAS carriers provide notice of compensated service. The FAA will make available a monthly list of carriers and airports receiving essential air service compensation.

A new § 158.9(b) is added to the final rule. This provision prohibits a public agency from requiring a foreign airline with no service to the United States to collect a PFC. This subject is addressed further in the discussion of § 158.47.

Section 158.11 Public Agency Request Not To Require Collection of PFC's by a Class of Air Carriers or Foreign Air Carriers

This section was not in the NPRM, but was added following consideration of the comments received. The NPRM would have required all air carriers and foreign air carriers to collect a PFC and would have required public agencies to consult with all such carriers at the airport.

Comments: Numerous comments request that particular classes of persons or carriers not be subject to PFC's. These include military and government personnel travelling on official business, passengers of on-demand air taxi operators, all international passengers, all charter passengers, persons travelling on "frequent flyer" discount fares and others. Some of these suggestions were proposed solely for the convenience or financial benefit of the commenting party, while others are based on concerns that the cost of collection to both the carrier and the public agency would outweigh any benefits of the PFC revenue derived by the public agency.

The joint submission recommends public agencies be given discretion to impose PFC's on passengers travelling on carriers in any class accounting for one percent or less of total enplanements at the particular airport.

Final rule: The FAA believes the proposal in the joint submission provides a reasonable cut-off point, and it forms the basis for the final rule. The FAA notes that the PFC will be a local charge, generating local revenue to be used locally. However, to ensure that public agencies designate classifications accurately, reasonably and without arbitrary or discriminatory effect, the final rule requires public agencies to obtain FAA approval of any class of carriers not required to collect a PFC.

Thus, while air taxis, for instance, may not make up 1 percent of the enplanements at large hub airports, that class may provide the majority of enplanements at smaller airports. Therefore, it would be unfair to these smaller airports to categorically exclude this type of operator.

Section 158.11 allows public agencies to determine what classes account for less than one percent of the airport's enplanements and to exclude them from the initial notice and consultation requirements under § 158.23. However, the public agency must formally request that particular classes of carriers not be required to collect PFC's as part of its application for authority to impose the PFC or as part of the amendment procedure. Since this request would be an essential part of the PFC application, disapproval by the Administrator of the proposed class would require the public agency to engage in reconsultation with all carriers operating at the airport and subsequent application.

Therefore, it may be prudent for the public agency to proceed with caution in preparing to submit the first such application. FAA Airport offices may be able to provide informal assistance in designating appropriate classes, but this assistance should not be relied on as an approval with respect to any request or class.

Section 158.13 Use of PFC Revenue. (Proposed: Use of PFC Revenue.)

As proposed, this section would have permitted the use of PFC's to pay the total cost of eligible projects and to pay debt service on bonds or other indebtedness incurred to carry out PFC-eligible projects. However, debt service was not otherwise defined.

The NPRM would not have allowed a public agency to use PFC revenue to finance the local matching share for projects receiving AIP funds. The FAA's intent was to ensure that PFC revenue would be used to supplement other sources of local airport construction funds rather than replace them.

Comments: The latter proposal drew a great deal of criticism, including a letter from several members of Congress arguing that Congress intended that PFC's be used as the local share for AIP projects. In particular, small airports argue such a prohibition would eliminate their ability to implement AIP projects; this, they claim, would defeat the intent of this program to enhance the capacity of the national airspace system.

Airports and the financial community also request that reimbursable debt service be further defined. Bond financing costs should also be eligible. A final comment in this area urges that the rule prohibit a public agency from imposing additional user charges to help pay the costs of a PFC-financed project.

Final rule: PFC revenue may be used to meet the non-federal share of projects funded under the AIP. The FAA recognizes the special problems that smaller airports may have in generating local matching funds and that PFC revenue may be a necessary source for the local match. The FAA intends to maximize the funds available to enhance safety, capacity, security and competitiveness under the PFC statute, and the FAA has been persuaded that this change in the final rule will accomplish this objective.

The FAA also is mindful that PFC revenue is local revenue. Historically, the FAA has not defined permissible and impermissible sources of local matching revenue under the AIP. Finally, the FAA notes that the statute is silent on the availability of PFC revenue for the local match.

This section also provides for the use of PFC revenue for bond associated debt service and financing costs. To further enhance the value of PFC revenue streams as support for debt financing, § 158.13(b)(2) of the final rule permits PFC revenue to be commingled with the airport's general revenue stream when required by bond documents. However, the correct proportion of the bond proceeds (or an equal amount) must be used for approved projects and any excess collections over annual debt service or other financing costs must be used on approved projects or to retire existing PFC-financed debt. Also, under § 158.13(c), public agencies may combine PFC revenue and federal grant funds to accomplish an approved project. This provision is unchanged from the NPRM.

Section 158.13(e) expressly requires a public agency to obtain FAA approval to use PFC revenue before the public agency may expend PFC revenue. Thus, if a public agency wants to use PFC revenue to fund environmental studies and other planning activities before receiving full project approval, it will have to identify these formulation activities as a separate project or projects for use of PFC revenue. Otherwise, it could be reimbursed for costs incurred for these activities once it

obtained project approval. More information on this two-step application process can be found in § 158.25.

The final rule does not prohibit the imposition of additional user charges to help pay for the costs of a PFC-financed project. The statute prohibits a public agency from including the PFC portion of the cost of any project in its rate base. However, a public agency may establish user fees to recoup the costs of operating and maintaining any such facilities, as well as any financial contribution not covered by PFC's or the AIP.

Section 158.15 Project Eligibility (Proposed: Project Eligibility)

As proposed, this section specified the kinds of projects that could be funded by PFC revenue and the objectives these projects must achieve to receive approval for use of PFC revenue. Eligible projects, by statute, are those that preserve or enhance the safety, capacity or security of the national air transportation system, reduce airport noise or mitigate airport noise impacts or enhance competition among air carriers. In addition, PFC financing would have been available for AIP-eligible airport development and planning projects, AIP-eligible terminal development, airport noise compatibility planning as described in 49 U.S.C. 2103(b), noise compatibility measures eligible for Federal assistance under 49 U.S.C. 2104 and public use, revenue and non-revenue passenger enplanement or deplanement areas and related facilities. The NPRM also provided examples of non-eligible categories of facilities, including all concessions, car rental facilities, restaurants and parking garages.

Comments: Several commenters question whether off-airport ground transportation projects are eligible. Smaller airports also request that concession facilities, including car rental and parking facilities, be eligible for PFC financing.

Final rule: The text of the rule has not been changed from the NPRM in any material way. However, ground transportation projects are eligible if the public agency acquires the right-of-way and any necessary land. Ownership is also necessary for project eligibility under the AIP. In this case, under the statute, PFC eligibility is identical to AIP eligibility. The final rule does not set any eligibility restrictions on the mode of transportation for airport access projects, nor does it impose any requirements on the geographical proximity of the project to the airport. These issues will be reviewed on a case-by-case basis as part of the Administrator's review and approval of an application to use PFC revenue.

Concession facilities are not eligible under the final rule for two reasons. First, such facilities are not AIP-eligible. Second, while gates and related areas are eligible projects, the FAA finds no basis for expanding the definition of eligibility to include concession spaces in these areas. Third, these facilities do not appear to increase the safety, security or capacity of the national air transportation system or increase airline competition, as required by the statute.

Subpart B

This subpart specifies the procedures to be followed and the supporting documentation to be submitted to the FAA by public agencies applying for authority to impose a PFC. It also describes the procedures and criteria that would be used by the FAA in reviewing applications to impose a PFC.

(Proposed Section 158.23 Requirements Prior to Submission of Applications)

The NPRM proposed the requirement that airport layout plan, airspace and environmental studies be completed and approved prior to submission of an application for a PFC by a public agency. The concept of such prerequisites for all PFC's drew criticism from over 40 respondents, especially the airport community. Many argue that the statute does not limit approval of authority to impose a PFC to only those situations where a project is ready to be implemented. Rather, they assert, a public agency should be authorized to collect for a major project, or slate of projects, that are nominally eligible but are still in the planning stage.

The majority of these commenters suggest that completion of all or some of the proposed prerequisites be deferred until the public agency submits an application to use its PFC revenue. Others argue that these requirements should not be applicable to imposition of a PFC or to implementation of PFC-financed projects.

An important consideration in this regard is the degree to which approval to impose a PFC irrevocably commits the FAA or a public agency to a course of action on a proposed project. If approval to impose a PFC is equivalent to such a commitment, the FAA's approval could be a major Federal action requiring a review under the National Environmental Policy Act of 1969 (NEPA), and it would be necessary to complete all environmental studies prior to such approval. Therefore, the FAA sought comments in the NPRM on whether the approval of an application to impose a PFC would be a major Federal action under NEPA or, alternatively, whether such approvals are outside the scope of NEPA.

Two respondents provide particularly helpful comments in this regard. They cite applicable court rulings and draw meaningful comparisons between these decisions and the approval of authority to impose a PFC separately from approval to use PFC revenue on a specific project. Following further analysis, the FAA has concluded that, with clear requirements for meaningful alternatives available to the proposed project and adequate safeguards on the expenditure of PFC revenue prior to approval, approval to impose a PFC would not ordinarily be a major Federal action within the meaning of NEPA. Rather, in most cases the approval would be categorically excluded from the requirement for an environmental assessment or statement. Environmental reviews would, however, be required before approval is given for use of PFC revenue to finance a project under the same procedures as are currently applicable to AIP or locally financed projects subject to FAA approval.

Although about one out of six respondents commenting on this issue concurred with the method set forth in the NPRM, the FAA agrees with the views of the majority that prior completion of environmental, ALP and airspace studies is not required for an application to impose a passenger facility charge. Accordingly, the final rule provides a procedure under which a PFC may be imposed prior to the completion of such studies.

The FAA recognizes the danger cited by some commenters that, in extraordinary circumstances, mere approval to impose a PFC may as a practical matter, commit the FAA or a public agency to a course of action or may otherwise influence future Federal decisions. If the FAA believes that danger to exist in a particular case, it will not approve an application to impose a PFC unless the appropriate environmental reviews have been completed.

In addition, the procedures for consultation, application, review and approval set forth in the NPRM are modified in the final rule to accommodate applications submitted for the authority to impose a PFC, either before or with an application to use PFC revenue on an approved project.

Several commenters propose various ways to streamline the process for notice, consultation, application, review and approval. Most involve submission of a comprehensive slate of projects in

the form of a master plan or capital program. One airport authority proposes a completely different process based on that concept with abbreviated periods for consultation and review. The FAA may, in some cases, be able to complete its required notice and review processes in less than the 120 days permitted by the statute. However, because of complexity or opposition, there are likely to be many applications that will not be able to be fully evaluated in less than the full 120-day period.

The FAA has attempted to adopt the spirit of the comments that urge a more streamlined, less complicated, process in obtaining approval to impose a PFC and to use the revenue remitted by carriers. Many of the suggestions were accepted and resulted in revisions in the final rule. Readers familiar with the NPRM will note substantial change throughout this section. Not all the comments were adopted, however, and the reasons are given in the discussion of each section below.

Section 158.23 Consultation With Air Carriers and Foreign Air Carriers (Proposed: § 158.25 Consultations With Air Carriers and Foreign Air Carriers)

This section in the NPRM would have required that, to the extent possible, a public agency provide notice to all air carriers and foreign air carriers currently operating at the airport. It specified the items to be included in such a notice, time limits for acknowledgement by air carriers of receipt of the notice, meeting requirements, and it established that the carriers must certify agreement or disagreement with the proposed projects.

Comments: Airports and airport organizations argue for relaxed notice and consultation requirements. Some recommend that air taxi operators be exempt from the notice procedure required of public agencies, and others urge a like exemption for charter operators because, by definition, they serve the airport on an irregular basis. A few endorsed the requirement in the NPRM that all carriers be notified and consulted. A number of commenters point out that a public agency's cost for consultation could easily exceed the amount of PFC revenue collected for some air carriers that enplane small numbers of passengers. The joint submission also suggests that attempts to coordinate and require collection of PFC's below some threshold of enplanements would be uneconomic. New § 158.11 was developed in response to their suggestions in this regard.

Final rule: The FAA weighed the comments requesting relief from notice to and consultation with all air carriers and concluded that the relief sought is warranted. Accordingly, § 158.23(a) has been modified to reflect the provision in § 158.11 that allows public agencies to request such relief with respect to any class of air carrier enplaning less than one percent of all passengers enplaned at the airport. The information about any such class of carrier is now included in § 158.23(a)(3) of the final rule. The Administrator's decision granting or denying such a request is discussed below under § 158.29.

Public agencies should note, however, that FAA approval or disapproval of the request will occur only in conjunction with the approval or disapproval of an application to impose a PFC under § 158.29. The Administrator must ensure that any relief to a class is reasonable, not arbitrary and not discriminatory. If the request is approved under that section, carriers in the named class or classes would not be required to collect the PFC. If the request is not approved, the public agency will have to undertake new consultations with carriers, including the class or classes which were named in the original application.

A few commenters recommend that consultation be limited to "major operators" at the airport. While this approach would seem to address the carriers serving most of the passengers enplaned at an airport, and, therefore, could comply with the spirit of the consultation requirement, the term itself is difficult to define. There is no agreed-upon level of activity that would serve to divide "major operators" from other operators at an airport; in addition, the same carrier may be considered "major" at one airport, but not at another. Therefore, the FAA has not adopted this suggestion.

Other commenters believe that no airline consultation is necessary, that consultation could be satisfied by mailing all project information to carriers in lieu of a meeting, or that consultation should not be needed on projects not affecting operations. The FAA did not adopt these suggestions because the statute is quite clear that air carriers should be consulted, that a meeting is required, and that the nature of the project is not a basis for eliminating consultation on a PFC-financed project.

There were also comments recommending that airlines not currently serving the airport, air cargo carriers and passenger representatives be consulted. The FAA encourages public agencies to involve as many interested parties as possible in the consultation process, but cannot, under the statute, make such widespread consultation a requirement. Of course, for any project requiring environmental study prior to implementation, all interested persons must be afforded the opportunity to provide comment. In addition, the FAA provides notice to and opportunity for comment by all interested parties during the application review process under § 158.27.

Some commenters argue that notice should be sent by registered letter or published in the **Federal Register**; others suggest that a facsimile transmission would be adequate. The FAA has chosen not to specify the form of written notice, leaving that choice to the public agency. However, failure by a public agency to satisfy the written notice requirement of this section could result in disapproval of an application. The **Federal Register**, as the vehicle used by the Federal Government to provide public notice, is not readily available for use by non-Federal organizations or individuals.

The remaining changes in this section result from reorganization and editing to improve clarity.

Section 158.25 Applications (Proposed: § 158.27 Application)

A main feature of the procedure proposed in the NPRM was the requirement that all environmental and technical studies for a proposed project be completed and approved before the PFC application could be submitted. As proposed, this section would have required public agencies to file applications not more than one year in advance of the proposed charge effective date and to implement an approved project within 2 years of that date. No provision was made for separate approval to impose a PFC in advance of project approval. Applications for more than one project would have been acceptable, but no work other than project formulation could have commenced until project approval.

The NPRM also set forth information that would have been required to accompany the application, and specified that the Administrator could request additional information if needed. In addition, the proposed rule referred to an application form depicted in Appendix A and accompanying public agency assurances set forth in Appendix B.

Comments: Most commenters argue that PFC application procedures modelled after those for AIP grants, as proposed in the NPRM, would be too burdensome and restrictive. They urge instead simpler, more flexible,

procedures for application, review and approval.

A number of commenters argue that authority to impose PFC's should be allowed separately in advance of project approval, as long as the public agency can demonstrate that it has under consideration or preparation sufficient projects that are nominally eligible for use of the PFC revenue collected. One commenter proposes that approval of a major capital program, a new airport, for example, be tied to a showing by the public agency of a demonstrated need for the program.

Under the two-step process most suggest, a public agency could submit an application to impose a PFC for projects currently in the planning stage and later file for approval of a specific project, or an extensive list of projects such as a long term capital plan. The documentation needed for project approval, say these commenters, can be submitted when appropriate for review and approval of specific projects on which PFC revenue would be spent.

Some respondents suggest slightly differing sequences for completing environmental and technical requirements in relation to PFC and project approval. One suggests that these requirements be accomplished in tandem with consultation; another that they be done concurrently with the Administrator's review and approval process; a third argues that environmental and technical approvals are not needed for PFC-financed projects; and a fourth suggests that a previously approved ALP can be used to satisfy that requirement.

Many commenters also suggest that an application to impose a PFC in advance of approval to use PFC revenue be accompanied by a list of back-up projects on which the accumulated revenue could be spent if major multi-phase projects were ultimately disapproved. A similar suggestion is that the public agency describe any alternative methods it is considering to accomplish its stated objectives.

A comment appearing frequently is that the term "project" in the application should be broadened to include major capital plans and multi-phased programs. Those who support this concept argue that this would give public agencies the flexibility they need to apply PFC revenue to specific projects in the most efficient manner and reduce the need to reapply for each successive project.

Many commenters also suggest that a public agency should have the flexibility to revise its implementation schedule for approved projects in a capital plan in any order it considers appropriate. This they argue, would allow public agencies to respond quickly to changing local priorities and to take advantage of more economical contracting and procurement opportunities. Another proposal for added flexibility suggests that public agencies be allowed to gradually phase in increasing PFC levels at their airports.

A number of comments specifically relate to time limits proposed in sections 158.27(c) and 158.27(d) of the NPRM. A few suggest that applications be accepted more than 1 year in advance of the proposed charge effective date; others argue for more than the proposed 2 years that would have been allowed between application approval and project implementation; and at least one commenter urged that no more than 6 months be allowed from the time of PFC approval to implementation.

A number of commenters express confusion with respect to the term "formulation" as it was used in the application procedure outlined in the NPRM. Several respondents suggest that the FAA define the term and some offer their own definition. Other commenters seek to expand the meaning of project to include various specific activities often associated with project formulation such as contracting for architectural and engineering services.

Others strongly urge that projects such as environmental studies and preliminary plans be eligible or reimbursable in conjunction with proposed projects. They assert that smaller airports in particular will not be able to afford the cost of required studies if they cannot use PFC revenue for that purpose.

Some commenters suggest that the application also include a certification from the public agency that it is not in violation of sections 9304 or 9307 of the Airport Noise and Capacity Act of 1990. A suggested alternative is that the FAA make that a specific standard of the approval process. Another commenter proposes that public agencies certify in the application, and on the form depicted in appendix A of the NPRM, that FAA's NEPA requirements have been satisfied.

One commenter argues that the application should include a checklist on which the public agency would be required to indicate deficiencies in airport safety or design standards. This commenter argues that an application to impose a PFC for a project other than to address such deficiencies should require an additional justification. Another seeks a requirement for project description to ensure that projects intended to benefit primarily all-cargo operators be easily identified for disapproval.

Some commenters recommend that the meaning of several terms used in the NPRM should be clarified or their use eliminated. Among these, it is suggested that the proposed requirement for a financial plan be revised to accommodate preliminary financial estimates; that the final rule provide guidelines for preparing acceptable enplanement projections; and that applications require greater specificity in the factors used to propose a charge effective date and other estimates related to total PFC revenue. One comment suggests that there is no valid need for a public agency to project the total PFC amount.

While one commenter asks for an explanation of what additional information the Administrator might request, as was provided for in the NPRM, another proposes that the provision be deleted.

Finally, two public agencies propose that certain existing agreements between airport sponsors under the AIP be used to justify relaxation of application requirements. One recommends that, where the FAA has issued a letter of intent (LOI) with respect to future funding of an approved program or project, and the LOI requires the public agency to impose a PFC, the public agency not be required to obtain the additional approval to impose a PFC. Another suggests that sponsors already obligated by AIP grant assurances be relieved of having to submit additional assurances with an application to impose a PFC.

Final rule: The FAA agrees that the authority to impose a PFC can be granted in advance of an approval to use PFC revenue on specific projects.

Accordingly, this section of the final rule is restructured to provide two application options. Under the final rule, a public agency may apply for authority to impose a PFC while finalizing the plans and studies for a project to be financed with the PFC revenue. The application to use the PFC revenue may then be submitted when all needed plans are complete and prerequisite approvals have been obtained. Alternatively, if a public agency is ready to immediately implement a project using PFC revenue, it may apply to do so at the same time it files the application to impose the PFC. The information to be submitted with an application for the authority to impose a PFC and to use PFC revenue are set forth in § 158.25(b) and (c), respectively, in the final rule.

The FAA considers the final rule to permit substantial flexibility on

alternative sequences to complete the requirements for approvals to impose a PFC and to use PFC revenue. A public agency may, in many instances, pursue completion of these requirements concurrently. The FAA considers it unnecessary, however, to specify in the rule the various paths by which a public agency satisfy the requirements.

The information to be submitted in all cases in which a public agency seeks the authority to impose a PFC is set forth in section 158.25(b). Inasmuch as the final rule does not include a specific form on which the application is to be submitted, as was proposed in Appendix A of the NPRM, the listing of required information in this section is more detailed. (The FAA intends to develop an application form independently from this rule, but a public agency need not await its availability in order to file an application.)

The application to impose a PFC requires information about the public agency, the airport at which the PFC is to be imposed and at which the revenue is to be used, the PFC level to be imposed, the proposed charge effective date and the project, including its justification.

In this regard, the definition of "project" in subpart A is revised as discussed above to clarify the FAA's intent that large capital programs and multi-phased projects, as well as more modest projects, are considered approvable. The requirement under § 158.25(b)(6), therefore, may be interpreted broadly or narrowly, as in the case of a public agency with plans for the immediate use of PFC revenue on discrete projects.

The results of consultation with air carriers and foreign air carriers are also to be submitted.

If the public agency wishes to request that any class of air carrier not be required to collect the PFC at the airport, that request and specified information regarding the class must accompany the application.

If the project is still in the planning stage and the public agency is seeking only the authority to impose a PFC, the financial information required by § 158.25(b)(14) must still be included. However, a public agency is required to provide only as much information as can reasonably be expected to be available during the planning stages of a comprehensive capital program. Finally, the FAA retains the provision whereby the Administrator may request additional information.

In a case where the public agency intends to proceed immediately with a PFC-financed project, the application should include the information required under § 158.25(c)(1) of the final rule. If such is the case, the public agency need not submit the information set forth in § 158.25(b)(14). It should be noted that a public agency is required to submit a signed certification regarding the completion of any necessary environmental, ALP and airspace studies and approvals. (If the application is to conduct planning or environmental study projects, to be done in preparation for a later application involving construction, this certification is not required.) The FAA intends to monitor the veracity of this certification closely to ensure that all requirements are fully met before granting approval to use PFC revenue.

If a public agency has obtained approval of an application for the authority to impose a PFC, and later applies for the authority to use accumulated PFC revenue, it must first consult further with air carriers and foreign air carriers. This consultation is intended to be less rigorous than the first in that it requires no meeting at which the public agency presents its proposed project to the carriers. It should, however, emphasize new or revised PFC or project information, including cost, that is relevant to the application. The public agency must then submit the information required under § 158.24(c)(2) of the final rule, including a summary of the further consultation. Again, the emphasis should be on changes to the original application to impose a PFC.

Whether a public agency intends to seek approval to use PFC revenue concurrent with or subsequent to the approval to impose a PFC, the project it proposes may consist of one or more discrete projects or a general program of projects. In either case, the public agency has the option to implement approved projects in whatever order best responds to local priorities and best meets local objectives regarding airport development.

The FAA agrees that an application to impose a PFC by a public agency that has been found to be in violation of these provisions should not be approved, and incorporates this provision as a criterion for approval, rather than including it as an item to be included in the application. See the discussion below on § 158.29, the Administrator's decision, in this regard.

The FAA has concluded that it is unlikely that a public agency will file an application to impose a PFC more than 1 year in advance of its proposed charge effective date and, consequently, this provision is deleted in the final rule. The 2-year limit for implementing a project approved under § 158.25(c), however, is considered appropriate. When coupled with the option to impose a PFC for an additional 3 years before approval to use the funds, as discussed below under §§ 258.31 and 158.33, a public agency may accumulate PFC revenue for up to 5 years before actually implementing a project. See the discussion of §§ 158.31 and 158.33 below regarding duration of authority to impose a PFC prior to obtaining project approval and prior to implementing an approved project.

The FAA considered developing a definition for "formulation" but has not done so. The problem lies, in part, with the fact that some costs of formulating a project, e.g., environmental studies, can be undertaken by public agencies as individual projects. (Some commenters interpreted the NPRM too narrowly in this regard.) Conversely, land acquisition, which is considered project formulation under the AIP, clearly could not be financed with PFC revenue until such use is approved.

This issue is resolved in the final rule by revising the definition of "allowable cost" as discussed above under subpart A to clarify that the costs can be incurred prior to approval to impose a PFC or use PFC revenue. It should be understood, however, that a public agency that incurs costs related to a project before the project is approved, may use PFC revenues to reimburse those costs only if the project is ultimately approved.

The FAA has chosen not to require an airport safety checklist or specific steps to highlight any particular type of project. To do so would indicate that the FAA intends to substitute its priorities for those of the public agency controlling the airport. In addition, with respect to concerns about airport safety, the FAA conducts periodic inspections of certificated commercial service airports to help ensure that critically needed safety projects are implemented when needed. This should be addressed during the required consultation process prior to the filing of an application. With regard to highlighting specific types of projects to preclude PFC of funding ineligible items, section 158.15(b)(6) indicates some of the types of projects that are ineligible for use of PFC revenue. The FAA is confident that, because eligibility for PFC-financed projects so closely parallels that for AIP-financed projects with the exception of gates and related areas, there is little likelihood that ineligible projects will be proposed or financed with PFC revenue. Consequently, these proposals are not incorporated in the final rule.

The FAA has not adopted suggestions that final rule incorporate more specific

guidelines for preparing any types of projections or any estimating methods that a public agency may use to develop its proposed charge effective or expiration dates. There is sufficient expertise extant in this specialized area that to proscribe a particular methodology by rule would reduce flexibility to adopt new or proven methods to locally controlled estimating needs. Although the FAA declines to specify the methods for developing such estimates, the final rule retains the requirements that public agencies present certain temporal and financial forecasts.

Readers will also note that the final rule retains the provision allowing the Administrator to request additional information if it is needed to fully evaluate an application. Although the Administrator would have that authority even in the absence of this provision, its presence is intended to advise public agencies that some additional information may be needed in certain circumstances. Because it cannot be predicted what specific information could be needed in a given case, however, the FAA has chosen not to articulate examples of information that potentially could be requested.

The final rule also retains the application requirement that public agencies certify in writing that they will comply with certain assurances related to the imposition of PFC's and the use of PFC revenues. These are considered necessary to ensure that projects constructed with PFC revenues are compatible with airport safety and design standards, further the policy of encouraging air carrier competition, and assuring compliance with specific PFC-related requirements. The individual assurances in the final rule are discussed below under appendix A.

The FAA has also decided not to adopt the proposal that an airport sponsor required by a letter of intent issued under the AIP to impose a PFC be exempt from the PFC-related application requirements. While certain of the consultation and application requirements may be redundant, the statute cannot be interpreted to provide such an exemption. In addition, although prior consultation and project approval will very likely allow speedier review and approval, it can also be expected that new issues will arise pertaining to imposition of the PFC and use of the revenue.

Section 158.27 Review of Applications (Proposed: Review and Approval Process)

As proposed, this section included the procedures for review of applications and the standards and procedures for approval of applications by the Administrator in a single section. With respect to review, the NPRM proposed that the Administrator would review the completeness of the application within 30 days after receipt. If the application was complete, the Administrator would have published a notice in the **Federal Register** soliciting public comment. Comments would be due in 30 days. Following review of the record, including public comments, the Administrator would have issued a decision within 120 days of the receipt of the application.

If the application was not substantially complete, the NPRM provided for the Administrator to advise the public agency of the deficiencies, and the public agency would have had 15 days to advise the Administrator of its intention to supplement the application. If the public agency chose not to supplement the application, the Administrator would have proceeded with a **Federal Register** notice inviting public comment and would have issued a decision within 120 days after receipt of the application. If the public agency supplemented the application, the Administrator would have reviewed the supplemented application for completeness. If the Administrator still considered the supplemented application to be incomplete, the public agency would have had a further opportunity to supplement the application. This process could have been repeated until the Administrator determined that the application was substantially complete or the public agency declined to file further supplements. Following notice and an opportunity for public comment, the Administrator would have issued a decision within 120 days after receipt of the final supplement.

The proposed rule also included provisions specifying the contents of the Administrator's decision to be published in the **Federal Register** and the standards for approval of PFC applications.

Comments: A number of commenters urge that the process be streamlined, and many propose the elimination of certain requirements, as discussed below. At least one commenter suggests that some expedition could be achieved if certain steps could proceed in tandem rather than sequentially. Others propose that certain requirements be eliminated.

Two airports propose that the rule provide for an Administrator's decision in less than 120 days, especially in the case of PFC applications that are not opposed by carriers. One of these proposals is part of a larger recommendation to expedite the review process.

With respect to completeness determinations, an airport operator proposes that the FAA take only 15 days to review the completeness of the application. On a related matter, another airport authority proposes that instead of restarting the 120-day decisional clock with receipt of each supplement, the final rule provide for a suspension of the clock between the time the Administrator determines the application is not substantially complete and receipt of the final supplement. Finally, one commenter suggests that notices of substantially complete applications under § 158.27(a) include a description of information required to achieve full conformity, or, in the alternative, that the concept of substantially complete be defined. Some airport commenters propose eliminating the **Federal Register** notice following receipt of an application as unduly burdensome or limiting public comments on the **Federal Register** notice to airport users. Another proposes that commenters be required, not merely permitted, to submit any comments in the local consultation process as their comments to the FAA. One trade association recommends that the FAA comment period conform to the period allowed in the local consultation process. A Federal Government agency proposes that the final rule omit the requirement that commenters serve a copy of their comments on the public agency and that the FAA arrange to forward public comments.

Final Rule: In addition to the many changes made in direct response to the public comments, the FAA has made a major structural change in the final rule. In the NPRM, § 158.29 contained proposed provisions that would govern both the FAA's review of an application and the Administrator's decision. The FAA has separated the provisions on FAA review and the Administrator's decision into § 158.27 and § 158.29 respectively. This separation is made because the same review process will be used for both an application for authority to impose a PFC and an application to use PFC revenue. In contrast, the Administrator's decision and standards for approval will vary with each kind of application. Section 158.29 is discussed more fully below.

The FAA has made some changes to simplify the review process, as discussed below. In addition, the provision for separate applications to impose PFC's and to use PFC revenue should permit some public agencies to impose a PFC sooner than would have

been possible under the NPRM. However, many of the steps of the review process are mandated by statute, e.g. notice and an opportunity for comment after FAA receipt of an application. Other steps are necessary to meet requirements imposed on the FAA. For example, the preliminary review for completeness is necessary to ensure the FAA will be able to make a decision on an application within the time required by statute. Many of the commenters' suggestions, including, for example, the proposal for a complete expedited review process, could not be implemented in the final rule as discussed below.

To simplify the review process, the final rule eliminates multiple supplements to applications deemed to be substantially incomplete by the Administrator. Under the final rule, the public agency may be required to provide only one supplement to the application. This change should eliminate the possibility that the review process can be extended for long periods without a final decision. A decision denying an application would not prevent the public agency from reapplying following further consultations.

The final rule does not provide for concurrent completion of different steps of the process, although that may be possible in the future.

The statute requires certain steps to be completed before filing the application and gives the FAA 120 days to complete the review. Given these requirements, the FAA is reluctant to provide specifically for concurrent actions at this time prior to gaining experience in implementing the rule. Therefore, the final rule does not reduce the number of days for the Administrator's decision on an application.

The final rule retains the provision for **Federal Register** notice and opportunity for public comment since this notice is the usual means of advising the public of that opportunity. The FAA will bear the burden of publishing the notice. The requirement that the public agency make a copy of this notice available upon request should not be unduly burdensome since a copy for inspection at the airport is sufficient. Publication of the notice in a local newspaper is optional with the public agency. As to limiting comments to users of the airport, the statute specifies that any "interested person" have an opportunity to comment, and there is no statutory basis for treating that language as limiting comment to airport users. Moreover, potential "users" of the airport may come from anywhere in the country. Therefore, the final rule does not incorporate either of these suggestions.

The final rule also retains the 30-day FAA comment period proposed in the NPRM. If the comment period matched the total time allowed in the local consultation process, 75 days, the FAA would, in many cases, have insufficient time to complete the review process within the 120 days provided in the statute. Also, the final rule does not require air carriers to submit to the FAA their comments in the local consultation process. Such a requirement would effectively preclude air carriers from responding to a public agency's explanations of its reasons for pursuing an application in light of certifications of disagreement and in doing so would frustrate the purpose and value of the notice and comment requirement.

The final rule also retains the requirement that commenters serve a copy of their comments on the public agency. Principles of fundamental fairness clearly entitle an applicant to be made aware of comments, arguments and evidence being presented in opposition to its application. The burden on commenters proposed in the NPRM—the cost of one additional copy and first class postage—is not unreasonable.

With respect to supplemented applications, the final rule provides that the 120-day review period be restarted with the filing of the supplement. It does not incorporate a commenter's suggestion that the clock be suspended while the supplement is being filed. Because the final rule provides for only one supplement, however, the prospect for extensive delay is largely eliminated.

On a related matter, the final rule does not incorporate a suggestion that notices of substantially complete applications specify any additional information required. This proposal misconstrues the concept of substantially complete applications, which is to assure that applications will be reviewed on their merits, even if not in strict technical compliance with all requirements of the rule. An application will not be considered substantially complete if the FAA considers additional information to be necessary for a decision.

Section 158.29 The Administrator's Decision (Proposed: Review and Approval Process).

As proposed, this section sets forth the standards for approval of an application and the contents of the Administrator's notice to the public agency of approval. Under the proposal, the Administrator would have approved an application only after a determination there would be no excessive PFC collections, the project met the objectives and standards of § 158.17, and the application was substantially complete. The NPRM required public agencies to file an application to both impose a PFC and use PFC revenue on a project.

Comments: This provision of the NPRM generated very little comment. A comment from the financial community suggests the rule state that the Administrator's decision be binding and conclusive.

Final Rule: The paragraph of the NPRM dealing with this issue (§ 158.29(g)) has been replaced with a new § 158.29. This reflects the fact that public agencies have the option to seek approval for imposition of PFC's separately from approval to use PFC revenue. Somewhat different standards are provided for each type of approval. Paragraph (a) defines the standards for approval to impose a PFC, and paragraph (b) defines the standards for approval to use PFC revenue. However, when a public agency applies for concurrent approval to impose a PFC and use PFC revenue, the public agency must satisfy the requirements of both paragraphs before the Administrator will approve the application.

Under paragraph (a), the Administrator will approve an application to impose a PFC only upon determining that excess revenue will not be collected, and the preferred project is eligible. In addition, the collection process, including a request to waive the collection requirement for a class of carriers, must be determined by the Administrator to be reasonable, not arbitrary, nondiscriminatory and in accordance with the law. When the public agency has not sought concurrent approval to use PFC revenue, there must be alternative uses for PFC revenue in case the public agency's preferred project is not approved.

The first standards reflect statutory requirements. The next standard allows the Administrator to ensure that the public agency has adopted a fair classification system that does not unfairly favor any carrier or class of carrier. Under this standard, for example, a classification of on-demand Part 135 operators might be approved, whereas a classification of Part 135 operators that had served the airport 5 years or more probably would not. The last requirement regarding alternative projects ensures that approval to impose a PFC does not inexorably commit the FAA to permit the use of PFC revenue on a particular project. The proposed standard that the application comply

with the final rule's application requirements has been omitted. Because the Administrator will rule on the merits of all applications after at most one supplement, this standard is no longer necessary.

Section 158.29(a)(2) specifies the Administrator's notice of approval will list projects and alternative uses that may qualify for PFC financing, the PFC to be imposed, total approved PFC revenue, duration of authority and the earliest permissible charge effective date. The FAA considers this information relevant to the approval to impose a PFC. In particular, the specification of the earliest permissible charge effective date allows the Administrator to ensure carriers will be ready to begin collection on the public agency's charge effective date. It is expected that this issue will be discussed during the local consultation process. The Administrator will not specify the exact charge effective date because, under § 158.43, the charge effective date will depend on the date of the public agency's notice to carriers.

Paragraph (b) defines the standards for approval to use PFC revenue on an approved project. The Administrator will approve an application only after the determinations that there will not be excessive collections, that the project meets the statutory standards for use of PFC revenue, and that any project satisfies all applicable requirements with respect to FAA airspace determinations, ALP approvals and compliance with NEPA. The first two standards relate to the standards in the PFC statute. Once a specific project has been identified for PFC financing, it is necessary to assure that the specific project may be financed by PFC revenue under the statute and that PFC revenue will not exceed the allowable costs of that project. The latter standard assures that a public agency does not use PFC funds on a project until all requisite Federal approvals have been obtained. If the Administrator cannot verify that these requirements have been met, the application will be disapproved. Under § 158.29(b)(2), approval to use PFC revenue on any project will be considered approval of that project for purposes of the rule.

Paragraph (c) of this section specifies that the Administrator will give written notice when an application is disapproved. That notice will include the reasons for the decision. While the NPRM included notification of approval, notification of disapproval was inadvertently omitted. If a public agency files a new application following disapproval, it must comply with the consultation and application requirements of the rule since it is likely a new application will involve some changes.

Section 158.31 Duration of Authority to Impose a PFC Following Project Implementation (Proposed Duration of Authority To Impose a PFC)

As proposed, this section would have allowed that a public agency to impose a PFC until it received the total approved PFC revenue, or the Administrator had terminated PFC authority under subpart E, or the public agency was determined to be in violation of relevant provisions of the Airport Noise and Capacity Act of 1990 and terminated the authority to impose a PFC thereunder.

Comments: Some commenters express concern that tying termination to receipt of total approved PFC revenue would be unduly burdensome to public agencies which had underestimated project costs and collected the amount of total approved PFC revenue before a project was completed or fully paid for. These commenters suggest termination be tied to collection of PFC revenue when they equal project costs. Some suggest public agencies be allowed to continue to impose the PFC and apply the PFC revenue to other approved projects.

Final rule: The proposed provision has been modified in three ways in the final rule. First, the final rule specifies that the public agency may impose a PFC until total PFC revenue plus interest equals the allowable cost of the approved project. This may require a public agency to revise its charge expiration date so revenue collected match allowable costs. This revision addresses the concern raised in the comments. The final rule does not explicitly provide for the continued imposition of a PFC to finance approved backup projects. If backup projects have been approved, under the terms of the rule, the public agency may use PFC revenue to finance these projects, and imposition could continue. However, the public agency must obtain specific approval to use PFC revenue for the backup projects. If authority to use the revenue on specific backup projects has not been obtained, the authority to impose the PFC would expire once the public agency had received sufficient PFC revenue and interest to pay for the costs associated with approved projects.

In the second change, this section of the final rule now explicitly applies only when a public agency has begun implementation of an approved project. New section § 158.33, addresses instances when a public agency has not implemented an approved project in a timely fashion, and is discussed below.

The third change is in paragraph (c), referring to termination for noncompliance with provisions of the Airport Noise and Capacity Act of 1990. The final rule specifies that the authority to impose a PFC will be terminated for noncompliance with that law in accordance with the implementing regulations for that statute.

Section 158.33 Time Limits for Imposition of PFC Collection Before Project Implementation (No Corresponding Provision in NPRM)

This new section in the final rule sets forth the standards and procedures governing the loss of authority to impose a PFC for failure to implement an approved project. The NPRM included a proposal requiring projects begin implementation within 2 years after the public agency's proposed charge effective date, but it did not explicitly provide for the consequences if a project were not implemented.

The final rule provides for such circumstances. The FAA also determined that the final rule should address the duration of authority to impose a PFC before a public agency applies for approval to use PFC revenue and implements a project. This ensures that collections do not continue indefinitely without PFC revenue being put to use as contemplated in the statute. Airport comments are generally critical of the proposed 2-year accumulation period. A number of commenters propose that collection be permitted up to 5 years. Some propose initial authorization of up to 5 years with periodic progress reports to carriers and the FAA. The joint submission recommends initial authorization of 3 years with the possibility of seeking a 2-year extension, and even a 5-year extension. One major airport suggests advance collection should not have a set time limit. This airport would allow the public agency to schedule PFC imposition, accumulation of revenue, and use of PFC revenue to minimize financing costs. One industry trade association proposes an even shorter accumulation period.

The FAA determined that the 2 year accumulation period may be insufficient for major projects when a public agency imposes a PFC during the planning and formulation process. The final rule permits initial accumulation for 3 years before a public agency applies for approval to use PFC revenue. The public agency may seek an extension of up to 2 years following an abbreviated application process, but at the end of 5

years, it must begin project implementation.

The FAA recognizes that the ability to accumulate PFC revenue may ultimately reduce total project financing costs by reducing the amounts public agencies need to borrow. However, advance accumulation by its nature requires passengers to pay for facilities that they may never use. Therefore, a limit on accumulation is appropriate.

The FAA believes that the three-plus-two approach is a reasonable limit. Even if a major project requires 10 years to complete, the public agency should be well along in the planning process by the third year and should have progressed to the point of project implementation by the fifth year. In addition, this approach has broad support in the comments.

Under paragraph (a), a public agency may impose a PFC for up to 2 years after receiving approval to use PFC revenue before it implements a project. However, if it had obtained prior authority to impose a PFC, it must implement the subsequently approved project no later than 5 years after the charge effective date. Thus, a public agency that imposed a PFC and received approval to use a PFC 2 years after imposition could continue to impose a PFC for 2 more years before project implementation—a total of 4 years. In contrast, a public agency that did not receive approval to use PFC revenue until 4 years after it began imposing a PFC could continue to impose the charge for only 1 more year before project implementation—a total of 5 years.

If after 2 years (or 5, when appropriate) when the public agency has project approval and the Administrator believes sufficient progress has not been made toward project implementation, the Administrator will begin termination proceedings under subpart E. The use of subpart E procedures allows the public agency to take corrective action and should reduce, but will not eliminate, bondholders' uncertainties over abrupt termination of a PFC revenue stream.

The FAA anticipates that in virtually all cases arising under paragraph (a), the matter would be resolved through informal resolution. The FAA does not expect that questions of project implementation would progress to the hearing stage.

Paragraph (b) sets forth the time limits for imposition of a PFC before approval to use PFC revenue. The public agency may collect for up to 3 years before an application for approval to spend PFC revenue has been filed or a request for an extension has been filed under § 158.35. If an extension is authorized, the public agency may continue to impose a PFC for only 2 more years unless it obtains approval to use PFC revenue. At the end of 3 years without an extension or project approval or 5 years without project approval and implementation of the project, the authority to impose a PFC will expire automatically.

In either case, it is doubtful that the public agency would have succeeded in obtaining debt financing based on PFC revenue without approval to use PFC revenue on an approved project. Therefore, the need to accommodate the financial community's concerns over sudden termination of PFC revenue streams should be less of a concern. In any event, the FAA has a statutory duty to prevent excess collections. In these circumstances, automatic expiration prevents the continued receipt of PFC revenue by the public agency without expenditure for the purposes intended by the statute.

The final rule also provides a mechanism for stopping collection of a PFC when authority has expired. The public agency must provide a list of carriers operating at the airport and other collecting carriers remitting to the airport in the previous 12 months. The FAA will notify these carriers of the expiration and the carriers will terminate collection within 30 days of the FAA's notification.

Finally, paragraph (e) provides that if authority to impose a PFC has expired, the Administrator will not grant new approval to reimpose the PFC until the project has been implemented. This provision will assure public agencies are not able to impose a PFC indefinitely by filing successive applications for authority to impose a PFC.

Section 158.35 Extension of Time To Submit Application To Use PFC Revenue (No Corresponding Section in NPRM)

This section sets forth the procedures for public agency requests for extension of authority to impose PFC's before receiving approval to use PFC revenue and implementing an approved project. The final rule provides for a more expedited local consultation and FAA review process than is required for initial approvals to impose a PFC or to use PFC revenue.

Paragraph (a) specifies that the public agency must provide notice in a local newspaper at least 30 days before submitting a request to the FAA and soliciting public comments. The notice must include progress to date, a revised schedule for obtaining project approval and reasons for delay.

Following public comment, but at least 120 days before the charge expiration date, the public agency must submit the request to the Administrator accompanied by the following information: the information provided in the local notice; a summary financial report showing PFC revenue already collected plus interest and to be collected during the extension and any local funds expended for which reimbursement will be sought; a summary of any further consultation with carriers operating at the airport; and a summary of comments received in response to the local notice.

The final rule does not require further consultation with carriers before the request is submitted. The local notice and comment process will provide carriers with an opportunity to register their views. In addition, full consultation is required before submitting the application for authority to use PFC revenue. However, a public agency may always engage in additional carrier consultation if it so chooses. A summary of such consultation must be included with the request.

The Administrator will approve the application upon determining that the agency has shown good cause for the delay in applying for approval to use PFC revenue; the revised schedule is satisfactory; and further collections will not result in excessive PFC revenue. The Administrator will decide on the request and provide written notice to the public agency within 90 days after the request was received.

Section 158.37 Amendment of Approved PFC (Proposed: Amendment of Approved PFC)

Under the NPRM, a public agency would have followed one of three courses in requesting an amendment to an approved PFC. If the public agency wished to decrease the level of the PFC without any appreciable change in the nature or scope of the project, no consultation with air carriers and no justification would have been required. If the amendment would have increased the PFC level, resulted in an incidental change in the project scope and increased the amount of PFC revenue used on the project by less than 15 percent, the public agency would not have been required to consult with air carriers, but would have been required to justify the amendment in writing to the appropriate FAA Airports office. More extensive amendments would have required consultation and any other information requested by the Administrator. The NPRM also proposed that the Administrator's review process would provide public notice and

opportunity for comment only for the most extensive category of amendments.

Comments: Over 20 commenters responded to this proposal in the NPRM. Although one finds the proposed amendment rule to be acceptable, about half of all commenters claim that it would be too burdensome and time consuming. Many add that the process proposed would adversely affect bond financing, unnecessarily delay projects, and limit the flexibility that public agencies need to deal with changing circumstances during the course of a project.

A number of commenters suggest that the criteria that would have been used to determine approval be spelled out, and that the final rule provide definitions of changes "incidental" to the project or changes in the "scope" of the project. Several ask that the threshold for cost increases requiring carrier consultation be raised from 15 percent, as was proposed, to 25 or 30 percent. Others suggest that no approval be required for amendments unless the carriers object, and some propose that the rule require only notification to the FAA and carriers upon a decision by a public agency to amend a PFC-financed project. One feels that there should be no threshold below which carriers consultation should not be required.

Some commenters question whether the FAA can initiate or require an amendment to an approved PFC by a public agency. Others express concern that, should an application for an amendment be disapproved, it not adversely affect the original PFC, and another proposes that there be an appeal process in the event that an application to amend is disapproved. Only one commenter urges that the rule specify a more expeditious review and approval process, to be completed in 30 to 45 days. Other comments suggest that the FAA consider suspending imposition of a PFC if the amendment is inconsistent with the original project, and that approval of an amendment be categorically excluded under NEPA.

Final rule: The FAA understands that most public agencies would like additional flexibility to modify approved projects, increase or decrease the PFC level, and otherwise respond promptly when financial or technical changes in a project are necessary. The final rule adopts a number of changes suggested by commenters which liberalize the requirements for obtaining an amendment. The requirement for FAA approval of an amendment is retained, however, to help ensure that future PFC revenue is used for eligible projects and that the costs of a PFC-financed project are limited to those which meet the "reasonable and necessary" criteria in the definition of allowable cost.

Under § 158.37(a) in the final rule, a public agency may decrease the level of PFC collected, decrease the total amount of PFC collected, or increase the total amount of PFC collected by 15 percent or less by simply notifying the collection carriers and the FAA in writing. Any new charge resulting from a change in the PFC level will be effective on the first day of a month which is at least 60 days from the date of notification to the carriers. For example, if the public agency notifies the carriers on the fourth of August that the PFC will decrease from $3 to $2, the effective date of that change is the first of November.

If a public agency wishes to amend an approved PFC project by increasing the PFC level, the total amount of PFC revenue collected by more than 15 percent, or by materially altering the scope of the project, it is subject to slightly more rigorous requirements. If such is the case, the agency must consult with air carriers and foreign air carriers and provide the FAA with written evidence of that consultation and the justification for the requested amendment. The Administrator may also request additional information if needed to fully evaluate the request.

If the carriers agree with the public agency's requested amendment, it will be effective 30 days after the FAA receives the application, unless notified otherwise. Any new charge resulting from the amendment will be effective on the first day of a month which is at least 60 days from the time of notification to the carriers, as discussed above.

If the carriers disagree with the requested amendment, the FAA will review the information submitted, including any reasons given by air carriers for opposing the amendment. The FAA will approve or disapprove such requests within 120 days of receipt of the application, allowing for such consultation, public notice and opportunity for comment as may be appropriate.

The consultation and review procedure outlined above will also apply to any request for approval of a new class of air carrier to be designated, or modification of any previously approved class, under § 158.11.

Although a number of commenters urge that amendments be automatically approved, or that they be approved unless the carriers object, the final rule retains the option to disapprove an amendment, even though the air carriers may not oppose it. This is, in part, to protect the interests of the passengers who ultimately pay the PFC's to fund the project, and, in part, to ensure that project costs do not exceed what are considered reasonable and necessary for the accomplishment of the project.

The statute establishes the authority for the Secretary of Transportation, through the FAA, to approve or disapprove the imposition of PFC's and the use of PFC revenue; approval or disapproval of a subsequent amendment is simply an extension of that authority.

The final rule establishes no specific requirements regarding environmental, ALP or airspace studies solely related to an application to amend an approved PFC or PFC-financed project. This is largely due to distinction between approval to use PFC revenue to pay the estimated costs of a specific project and approval to use more or less revenue to cover the actual costs of that project. Such amendments would almost always be within the scope of the project as it was defined in earlier studies. If the amendment would put the project outside the scope of that definition, or constitute an essentially new project, the appropriate NEPA reviews, as well as other studies, would be mandated.

The final rule does not refer to "incidental" changes to the project, but it retains the concept, suggested in the comments, of materially altering the project "scope." This term, although it may be insufficiently precise for some, is suggested by the joint industry commenters who would be most likely to be involved in any dispute arising over a proposed amendment. In addition, the FAA intends to apply a standard to this term which would include a quantitative increase in the project (e.g., increasing the length of a PFC-financed taxiway), but would not include amending an approved taxiway construction project to allow extension of a runway. Such changes would require that the additional project be included in a previously approved application to use PFC revenue, or that it be the subject of a newly filed application to use PFC revenue.

The final rule provides no specific appeal procedure for a public agency in the event an application for amendment, or an original application, is disapproved. The agency may, of course, refile an application at any time. The disapproval of an application for amendment will not affect the validity of any previous PFC-related approval. In addition, the final rule does not provide that disapproval of an application for an amendment result in suspension of authority to impose an approved PFC. Provisions for termination of that authority are provided in subpart E of the final rule in the event that such a course of action is necessary.

Section 158.39 Use of Excess PFC Revenue (Proposed: Use of Excess PFC Revenue)

Because this section was geared toward concurrent approvals for imposing a PFC and using PFC revenue, it provided only for the use of excess revenue after receipt of approved PFC amounts. Accordingly, it proposed to require public agencies to notify carriers to stop collecting when PFC revenue equalled the amount of total PFC revenue approved. In addition, it specified that any excess revenue be reserved for future eligible projects. However, it did not provide a mechanism to assure that the excess revenue were used as required.

Comments: The comments generally support the NPRM's approach, although they note some concerns. A number of airport operators are concerned that tying the requirement to stop collecting PFC's to the amount of approved PFC revenue did not allow for incorrect prediction of estimated project costs. In addition, some commenters express concern that the proposed rule did not explicitly provide for the use of PFC revenue required to meet debt coverage requirements over and above payments of principal and interest.

Commenters, including the joint submission, also suggest that excess PFC revenue be used to retire existing PFC-backed bonds or to issue new bonds.

Other comments propose additional related uses for excess PFC revenue such as applying the excess revenue to the Federal share of projects undertaken by the public agency or distributing the excess to general aviation, small hub and non-hub commercial airports under AIP formula.

One commenter proposes that excess revenue be held in reserve without penalty or termination.

Final rule: The final rule defines excess revenue in terms of approved PFC amounts in § 158.31, as described above, and in a revision to the NPRM language on use of excess revenue. Under § 158.31, the duration of authority to impose is tied to receipt of PFC revenue equal to allowable costs, not total approved PFC revenue. Excess revenue is now defined in § 158.33 as revenue, plus accumulated interest thereon, exceeding allowable project costs. When revenue collected to satisfy bond coverage requirements creates excess revenue, that revenue may be used for approved projects.

A new paragraph (c) provides for the use of accumulated revenue received before authority to impose a PFC lapsed due to failure to implement an approved project. In any case, excess PFC revenue must be used on approved projects, including retirement of existing PFC-financed debt.

Under new paragraph (d), the public agency must, within 30 days after authority to impose the PFC has terminated or expired, present to the FAA a plan for using unspent PFC revenue. If the public agency does not present the plan, or the plan is unacceptable, the Administrator will start proceedings to offset AIP entitlement funds under subpart E. The PFC statute authorizes offset of AIP entitlement funds as one means to cure excess collections. Under this provision, PFC revenue cannot be held indefinitely without penalty. To permit a public agency to do so would be contrary to the statutory intention that PFC revenue be applied to projects that enhance the safety, capacity, security, and competitiveness of the national air transportation system or that mitigate adverse noise effects of airport operation. The final rule does not provide for use of excess PFC revenue as part of the Federal share of specific grant-eligible projects or for redistribution to other airports. PFC revenues are local funds, not Federal funds. The FAA can find no basis in the statute for distributing them to other airports or for applying them to the Federal share of specific AIP projects. However, as discussed above, the FAA will start proceedings to offset apportioned Federal financial assistance as provided by the statute if the public agency does not commit to using the accumulated PFC revenue.

Subpart C

Subpart C specifies requirements for providing notice of the imposition of PFC's, and for collecting, handling and remitting PFC's. This subpart has been designed to allow as much flexibility as possible to the public agencies and the air carriers and foreign air carriers while still maintaining adequate protection for each party involved.

Section 158.43 Public Agency Notification To Collect PFC's (Proposed: Public Agency Notification To Air Carriers and Foreign Air Carriers)

As proposed, this section would have required each public agency that had been granted authority to impose a PFC to give written notice to the carriers and foreign air carriers operating at the airport. The carriers would then be responsible for notifying their agents, including other issuing carriers, of the requirement to collect and the effective date to begin collection. As proposed, the effective date of the PFC would be no sooner than 30 days after notification.

Comments: Commenters suggest all notices of approval to impose PFC's appear in the **Federal Register**. These commenters also want some provision for notification for any subsequent amendment to the amount of PFC collected. Commenters suggest that the public agency be required to give more than an "estimated" charge expiration date, because public agencies would be unable to forecast the exact date to stop collecting the PFC. Some commenters, including the joint submission, also want the FAA to set up and maintain a PFC clearinghouse and publish a monthly report that would list any PFC's approved in that month and any relevant EAS information. Travel agents note the absence of specific requirements for notifying the CRS vendors or travel agents, and suggest that FAA provide a mechanism for such notification.

Final rule: Under the final rule, those carriers required to collect the PFC are provided notice of collection levels, the total revenue to be collected and the charge effective date. This date must be at least 60 days from the date the public agency notifies the carriers and must be on the first day of a month. This should provide sufficient time for carriers to arrange collection procedures.

A public agency must notify the carriers required to collect the PFC of any amendment to the total amount of PFC revenue being collected or the level of PFC imposed, and the word "proposed" has been added to "expiration date" to recognize that this date is proposed. Each carrier will be responsible for notifying its agents, including travel agents.

Section 158.45 Collection of PFC's on Tickets Issued in the United States (Proposed: Collection of PFC's)

This section as proposed contemplated that the issuing carrier, upon notification, would be required to collect a PFC on all air travel tickets sold on or after the charge effective date. The ticket would be required to show the PFC imposed at each airport and the total PFC paid by each passenger. As required by statute, no PFC's would be collected after the passenger has paid two charges on a one-way trip (or two in each direction of a round trip) and no PFC may be collected when the passenger is being provided air service for which essential air service (EAS) compensation is being paid. The NPRM also stipulated a PFC could not be collected when a passenger's travel to an airport charging

a PFC is the result of an involuntary change in a passenger's itinerary. All PFC's would be collected and remitted by the issuing carrier as noted on the ticket, thus eliminating the need for interline settlements.

Comments: The issue drawing the most attention in the comments was the determination of one-way and round trips for the purpose of determining which airports in a passenger's itinerary are entitled to receive PFC revenue. The joint submission recommends that PFC's only be collected at the first four airports where PFC's are imposed without regard to whether the itinerary was a round trip. They argue this is the simplest and least expensive way for the carriers to redesign their systems, and would also be the least confusing to passengers. Recognizing that statutory requirements could prevent the adoption of this proposal, the joint submission offers an alternative under which the PFC would be assessed at the first two airports and the last two airports on a passenger's itinerary at which a PFC is being imposed. Although the second alternative presented is more costly than the first, the joint submission supports the adoption of either of these alternatives.

Most commenters agree with the NPRM that, in the event of an involuntary change in a passenger's itinerary not requested by the passenger, the PFC's should be remitted to the airports on the original ticket itinerary. Conversely, for voluntary changes requested by the passenger, the commenters support assessing the PFC. However, they recommend limiting refunds or new PFC's to those cases in which there is an adjustment made to the amount paid by the passenger.

Another major issue was the treatment of foreign carriers. The comments from individual foreign carriers and from IATA request that foreign carriers be exempt from collecting and remitting PFC's. Commenters indicate that some countries prohibit the collection of foreign taxes. The PFC, they contend, would be considered such a tax. (While carriers already routinely collect customs service inspection fees, the airline ticket tax, and other such charges, these commenters claim this is done on a "voluntary" basis.)

Some comments from individual airports indicate that there should be a penalty for carriers that refuse to collect or remit PFC's.

Final rule: The first change is in the title. Because of the comments received on the treatment of foreign air carriers and on tickets issued outside the U.S., the final rule addresses these issues in two different sections. Upon notification by the public agency, the collecting carriers will be required to collect PFC's on all tickets issued in the U.S. on or after the charge effective date. The appropriate charge is the PFC in effect at the time the ticket is issued.

The PFC's collected will reflect a passenger's itinerary at the time of issuance. Any changes in itinerary initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of PFC's.

Each air travel ticket must show the total amount paid by the passenger for PFC's and each airport for which the PFC is collected. For each one-way trip, a PFC may only be collected for the first two airports where PFC's are imposed. For each round trip, a PFC will be collected only for enplanements at the first two airports and the last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made.

The rule requires that no PFC can be collected from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route.

Carriers and their agents must stop collecting PFC's on the charge expiration date that is specified in a notice from the public agency or as required by the Administrator.

The FAA has not included in this section any penalties for carriers for non-collection of PFC's. However, carriers are subject to the same penalties for violations of this rule as for any other violation of FAA regulations.

Section 158.47 Collection of PFC's on Tickets Issued Outside the U.S. (Proposed: No Previous Section)

This is a new section of the rule, created in response to the comments received from individual foreign carriers and from IATA requesting special treatment for foreign carriers.

No foreign air carrier is required to collect a PFC on tickets written on its own imprinted ticket stock unless it serves a point or points in the U.S. Under this section, an air carrier or foreign air carrier that issues tickets outside the U.S. has three alternatives. (1) It may follow the procedures for tickets sold in the U.S. as set forth in § 158.45. (2) It may collect the PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or (3) It may collect the PFC from the passenger at the time the passenger is last enplaned in the U.S. Foreign and domestic carriers are given equal flexibility for tickets issued outside the U.S.

If a carrier chooses not to follow the procedures in § 158.45, it is only required to collect PFC's for public agencies controlling the last airport at which the passenger is enplaned prior to departure from the U.S. Some commenters complain that foreign air carriers would be unable to keep track of different PFC levels and imposing airports. However, the FAA believes that no such burden exists at an airport directly served by the carrier. Whenever the PFC is collected, the collecting carrier must give a written indication, but not necessarily printed on the ticket, that such PFC has been paid. The same procedures discussed in § 158.45 concerning changes in itinerary initiated by a passenger are also applicable in this section.

Those air carriers and foreign air carriers that elect to collect the PFC at the time of issuance are not required to make separate provision to collect PFC's at the airport for tickets sold by other air carriers or foreign air carriers or the agents of such carriers. While this will reduce PFC revenue received by the passenger's departure airport, the FAA believes it is not reasonable to require carriers to establish two different PFC collection systems. Those carriers that collect the PFC at the gateway airport must examine the ticket of each enplaning passenger and collect the PFC from any passenger whose ticket does not indicate that the PFC was collected at the time of issuance. As in § 158.45, collected PFC's shall be distributed as indicated to the passenger, and collecting carriers and their agents shall stop collecting the PFC on the charge expiration date included in a notice from the public agency or the Administrator.

Section 158.49 Handling of PFC's. (Proposed § 158.47)

The NPRM proposed that each air carrier and foreign air carrier responsible for collecting PFC's would be required to account for PFC charges separately in accordance with Generally Accepted Accounting Principles (GAAP).

Comments: Many of the comments indicate that using GAAP is inappropriate; that GAAP is for the presentation of information in financial statements and not for accounting purposes. Instead the commenters recommend that the FAA require only that carriers maintain a financial management system that establishes accountability of the funds.

Other comments on this section focus on how carriers should treat the funds

they collect for the public agencies before remittance. Several individual airports urge the FAA to require carriers to establish separate escrow accounts in which to hold PFC revenue pending remittance to the public agency. Bond rating agencies and other financial entities ask the FAA to regulate the type of investment instruments in which the air carriers and foreign air carriers could invest PFC revenue. These commenters express concern that the holders of bonds backed by PFC revenue would not be protected if the carriers could invest in high-risk, high yield investments, and suggest that all PFC revenue be aggregated in separate trust accounts with strict stipulations on the type of investments allowed. These commenters are particularly concerned that, in the event of a carrier's bankruptcy, PFC revenue would become subject to bankruptcy proceedings and the public agency would be denied access to the funds. Individual carriers, on the other hand, indicate that such an accounting system would be an unnecessary and expensive administrative burden.

The joint submission suggests that the carriers: (1) Be allowed to commingle PFC revenue with other revenue but treat PFC's as trust assets of the public agencies in which the carriers hold only a possessory interest and not an equitable interest; (2) be required to disclose the existence and amount of funds subject to the PFC trust in any financial statements; and (3) be required to place PFC revenue in a separate trust fund promptly if the carrier misses a payment or payments to the public agency without a satisfactory justification to the Secretary. The joint submission also suggests that the Secretary may decide that it is sufficient to issue a notice to the carrier to remit the revenue promptly and meet future payment deadlines or face further action.

Final rule: Instead of requiring the use of Generally Accepted Accounting Principles, the final rule provides that collecting carriers must maintain their financial management systems in accordance with the Department of Transportation's Uniform System of Accounts and Reports, which are contained in 14 CFR part 241. Those carriers not subject to Part 241 must establish and maintain an accounts payable system to handle the PFC revenue.

The FAA adopted the commenters' suggestion on how to handle the PFC revenue between collection and remittance. The rule allows the carriers to commingle the PFC revenue with other sources of revenue, but the carriers must regard the PFC revenue as trust funds held for the beneficial interest of the public agencies imposing the PFC. This is revenue in which the carriers hold only a possessory and not an equitable interest. The carriers must also disclose the existence and amount of these funds subject to the PFC trust in any financial statements. The final rule does not impose investment requirements on PFC revenue. Such a requirement would interject the Federal Government too deeply into management of local funds. Moreover, the final rule provides for additional carrier compensation, thus reducing the likelihood of carriers investing PFC revenue in risky high yield investments.

Section 158.51 Remittance of PFC's. (Proposed: § 158.49)

The NPRM proposed that revenue collected by the issuing carrier or its agent within the first 15 days of a month would be remitted by the fifteenth day of the following month. Revenue collected within the second half of the month would be remitted by the end of the following month. Thus, an air carrier would be allowed to retain the PFC revenue for a maximum of 45 days and funds would be remitted to the public agency twice a month.

Comments: Overwhelmingly, commenters think such remittance is excessive and overly burdensome. Some individual airports support twice-monthly remittance and some individual carriers suggest quarterly remittance. The joint submission recommends monthly remittance, 30 days after the end of the month in which the PFC was collected.

Final rule: The carriers shall submit the PFC revenue to the public agency on a monthly basis no later than the last day of the following calendar month.

Section 158.53 Collection Compensation

The NPRM provided for carriers to retain any interest they may earn on PFC revenue from time of collection to time of remittance as compensation for the administrative costs associated with collecting, handling, and remitting PFC's.

Comments: Most carriers claim that the float, expected to be about $0.03 per PFC, is inadequate to cover their expected costs. Although total cost figures differed, they reflect a carrier's level of automation for administrative and accounting processes, with the most automated carriers incurring the greatest start-up costs but lesser on-going costs. Each carrier commenting on this issue submitted statements that costs could not be recovered by the float mechanism alone. Of the comments submitted by the carriers, the FAA received varying amounts of information on how the carriers estimated the costs of the PFC program. In particular, the FAA notes that no useful data was received from foreign carriers to support their claim that their costs are higher than those of U.S. carriers, or, indeed, to give any indication of what their costs might be. In the absence of such data, and without any other basis for a different conclusion, the FAA concludes that the cost of PFC collection is likely to be similar among carriers of similar size and levels of automation. Accordingly, the agency further concludes that there is no basis to believe that such costs would significantly alter the average of reasonable and necessary costs, which must be the basis of any uniform charge under the statute. Some of the individual airports comment that the float should be adequate to cover the administrative costs of PFC's. The joint submission agrees that the float would not be adequate compensation but could not agree on or recommend an appropriate level of compensation.

Final rule: The quantitative data submitted to the docket was examined to determine the average necessary and reasonable costs necessary to compensate the industry. The FAA also attempted to adjust the carriers' cost estimates to reflect the requirements of the final rule. The data reveal variation from carrier to carrier. For example, carriers with the most complete automation of the ticketing and revenue accounting functions generally projected higher start-up costs than those with less automation. However, the operating costs of the more fully automated carriers are projected to be lower.

The statute requires collection compensation to reflect carriers' average costs. By definition, such an average cost figure will not fully reflect all of the variation among individual carriers. However, the FAA has carefully reviewed the data available and is satisfied that collection compensation provided in the final rule is a reasonable assessment of carriers' average costs based on that dat. In addition to retaining the interest it may earn on PFC revenue from time of collection to time of remittance, the collecting carrier will be entitled to retain $0.12 of each PFC remitted on or before June 28, 1994. Thereafter, air carriers will be entitled to retain $0.08 of each PFC. The higher compensation in the early years of the program is intended to allow carriers to recoup start-up costs in a more timely fashion. The FAA encourages cooperative efforts among

representatives of airports and air carriers to ascertain any future need for changes to this compensation level. We are particularly interested in methods for determining the appropriate fee without extensive ratemaking-type analysis by the FAA.

Subpart D

Subpart D specifies requirements for reporting, recordkeeping and auditing by the collecting carrier and the public agency. This subpart has been revised to minimize requirements while providing adequate information to protect each party.

Section 158.63 Reporting Requirements: Public Agency

As proposed, this section would have required each public agency to report within 30 days of work beginning on a project and any substantial deviation from the estimated project schedule. It also proposed reporting costs and the agency's proposed corrective action, 60 days advance notice of project completion and receipt of 90% of total PFC revenue.

Comments: A number of commenters state it is impossible to know precisely 60 days in advance when project completion would occur and want the FAA to define "substantial deviation from the estimated project schedule." Many comments, including the joint submission, claim the reporting requirements are burdensome and recommend public agencies be required instead to submit regular progress reports or quarterly reports to the carriers. Two commenters recommend the public agency report any changes in its aircraft operating rules as they apply to the use of Stage 2 equipment. The later is a reference to requirements in the Airport Noise and Capacity Act of 1990 to local restrictions on the operation of Stage 2 and Stage 3 aircraft. See the FAA's NPRM (56 FR 8644; February 28, 1991).

Final rule: The public agency will provide quarterly reports to carriers collecting PFC's for the public agency, with a copy submitted to the appropriate FAA Airports office. The report will include PFC revenue received from collecting carriers, interest and expenditures for the quarter and cumulatively, current project schedule and the amount committed for use on projects already approved. The commenters believe the quarterly report will provide the carriers and the FAA with the sufficient information for oversight of PFC revenue. This section also includes a new requirement for airports enplaning 0.25 percent or more of the total annual enplanements. The public agency controlling such an airport must provide FAA with an estimate of PFC revenue to be collected in the next fiscal year. This must be done by August 1st of each year, so the FAA can determine the reduction in AIP apportionment levels for these airports for the subsequent fiscal year.

This section does not require the public agency to report any changes in its aircraft operation rules as they apply to the use of Stage 2 equipment. This would be a burdensome requirement; only those actions not in compliance with 9307 and 9304(e) of the Airport Noise and Capacity Act (ANCA) would affect imposition of the PFC. As noted above, the FAA has proposed regulations to implement the ANCA, including actions necessary to counter illegal restrictions.

Section 158.65 Reporting Requirements: Collecting Carrier. (Proposed: Reporting Requirements: Issuing Carrier)

As proposed, this section would have required each issuing carrier collecting PFC's for a public agency to file quarterly reports to the public agency, unless otherwise agreed. The reports are to provide an accounting of funds collected and funds remitted to the public agency. The reports were to identify, by airport and air carrier, the total passengers enplaned, the passengers exempt from collection because of the EAS limitation (§ 158.9), limitations per one-way trip (§ 158.11), limitations regarding involuntary change in itinerary, and the number who were exempt due to purchase of tickets before the charge effective date. The report was also to identify any PFC's collected and remitted, but subsequently refunded to passengers due to changes in itinerary initiated by passengers.

Comments: Most commenters support the concept of quarterly reports, but several recommend monthly reports to accompany remittance of PFC revenue to the public agency. A number of commenters state the report needs to show only the amount of PFC's collected, the amount refunded, and the amount reimbursed. Carriers state that it would be nearly impossible to reconcile monthly passenger enplanements and revenue. One carrier states that only by collecting itinerary information from all passengers would a carrier be able to identify the enplaned passengers exempt from the PFC, and that, today, carriers collect complete itinerary data for only 10 percent of passenger itineraries. Some commenters recommend relaxed requirements for foreign carriers, and others recommend an annual report for carriers carrying a limited number of PFC passengers.

Final rule: The reporting requirement has been simplified. Unless otherwise agreed to by the collecting carrier and the public agency, reports will be required to include the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of revenue withheld by collecting carriers from the 12-cent or 8-cent fee for compensation and the total amount remitted to the public agency. The carrier does not have to report earnings from interest gained on PFC revenue between collection and remittance to the public agency. The FAA believes that the revised reporting requirements are not burdensome, will provide public agencies with necessary information in a timely fashion, and should be required of all carriers collecting a PFC.

Section 158.67 Recordkeeping and Auditing: Public Agency

As proposed, this section would have required that each public agency keep unliquidated PFC revenue on deposit in an interest-bearing account. Revenue and interest earned was to be used to pay the allowable costs of the PFC-funded project. The public agency would have been required to establish and maintain for each approved application, a separate accounting record including revenue received and amounts expended on the project. Each public agency would have been required to provide for an independent audit at least annually of each project.

Comments: A number of commenters state that while airports should be required to account for PFC revenue separately, they should not be required to segregate those revenue in separate accounts. The consensus of comments is that it would be unnecessarily onerous to require independent audits for each PFC funded project. Many commenters believe the auditing requirements are too burdensome and costly and recommend that the public agency be allowed to provide for an audit under the Single Agency Audit Act as used for AIP projects, allowing for a combined audit for all PFC projects at the airport. Public agencies also want to recover auditing costs of PFC revenue as a part of the project cost. One commenter questions the purpose for requiring the public agency to provide copies of its audits to air carriers upon request. A number of commenters request that the term "unliquidated PFC revenue" be defined.

Final rule: The final rule continues the requirement to keep any unliquidated PFC revenue on deposit in an interest-bearing account, but adds that it may be deposited in other interest-bearing investment instruments used by the public agency's airport capital fund. Thus, PFC revenue may be commingled with other public agency airport capital funds. While a segregated PFC account is not required by the rule, an amount equal to the PFC revenue remitted by carriers and any interest earned must be retained in an airport's capital account until used on an approved project.

The auditing requirements in the final rule have been reduced to limit the cost while still ensuring that the public agency adequately protect PFC revenue. The audit shall be performed by an accredited independent public accountant who shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding and using PFC revenue, and shall express an opinion on whether the quarterly reports required in § 158.63 fairly represent the net transactions within the PFC account. As requested by a number of commenters, public agencies can provide for an audit under the Single Agency Audit Act as used for AIP projects, as long as PFC projects are specifically addressed by the auditor.

The rule continues to require that public agencies provide copies of their audits to air carriers upon request and to provide carriers with the assurance that the funds they collect for the public agency are being properly used and adequately accounted for. Air carriers must also provide public agencies with a copy of their audits upon request. Public agencies can recover auditing costs of PFC revenue as a part of the allowable project cost. The term "unliquidated PFC revenue" has been defined in subpart A.

Section 158.69 Recordkeeping and Auditing: Collecting Carrier (Proposed: Recordkeeping and auditing: Issuing Carrier)

As proposed, this section would have required that issuing carriers establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted and refunded. The accounting record was to identify the airport and carriers on which passengers were enplaned at the airport. Carriers were required to provide an independent audit of the PFC account annually and provide copies to each public agency upon request.

Comments: Carriers comments recommend that the amount of PFC revenue collected be recorded by airport and not include enplanement data by airline. A few commenters recommend allowing carriers to aggregate all airport accounts with fewer than 100 passengers per year into a single account. The general consensus of the carriers' request on audits is that the requirement be limited to focusing on whether the proper procedures are in place to ensure that the best effort is made to remit and report the fees due. A number of commenters object to the requirement for annual independent audits, because it would require a significant amount of work and expense. They recommend that the audit cover the PFC account of the carrier and not be a separate audit for each public agency for which the carrier collects a PFC. Smaller carriers and foreign carriers seek relaxed audit standards, with foreign carriers stating that the audit requirement would be difficult to enforce outside the U.S.

Final rule: Both recordkeeping and audit requirements have been revised as a result of the comments. All carriers are required to establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, and refunded, and the compensation retained from the 12-cent or 8-cent fee. As recommended in the comments, the record must identify the airport at which a passenger actually enplanes but there is no requirement to identify the carrier transporting the passenger.

The rule requires that a procedural audit be performed by an accredited independent public accountant who shall express an opinion of fairness and reasonableness of the carrier's process for accounting, collecting, holding, and remitting PFC revenue. The opinion would also address whether the quarterly reports required in § 158.65 fairly represent the net transactions of the PFC account. The audit is for the PFC account of the carrier; the rule does not require a separate audit for each public agency for which the carrier collects a PFC. The audit would only apply to PFC revenue once it has been paid to the carrier, either by the passenger or by an agent of the carrier. The rule does not require carriers with fewer than 50,000 PFC passengers a year to perform an audit, because the cost of the audit could exceed the carrier's collection fee. In those cases where an audit may be necessary for those carriers not providing an audit, it would be performed by the Administrator, the Secretary, or the Comptroller General as provided in § 158.71. Upon request, a copy of the audit must be provided to the public agency for which a PFC is collected.

Section 158.71 Federal oversight (Proposed: Federal Recordkeeping and Auditing Oversight)

As proposed, this section provided for periodic audit and/or review of the collection and remittance of PFC revenue by carriers and of the use of PFC revenue by public agencies. Audits and reviews could be performed by the Administrator, the Secretary, or the Comptroller General to ensure compliance with this regulation.

Comments: Commenters generally did not object to the proposed requirements in the NPRM. One airport comments that any requirement beyond an independent audit is an inefficient use of government and industry resources.

Final rule: The rule retains the requirements in the NPRM, providing for periodic review and/or audit of both the public agency and the carriers. While the FAA expects to rely primarily on the audits performed for the air carrier and public agency, the statute calls for direct Federal audit and review. This provision is particularly important since carriers collecting less than 50,000 PFC's annually are not required to provide for an independent audit.

Subpart E

Subpart E provides for termination of PFC authority when the Secretary determines revenue is not being used in accordance with this regulation. It also allows for a reduction in a public agency's AIP funds to ensure compliance with this regulation.

Section 158.83 Informal resolution (New Section)

The NPRM proposed that the Administrator may enter into informal resolution with the public agency if, after review under § 158.71, there were concerns that PFC revenue was not being used in accordance with this regulation or with section 1113(e) of the FA Act. Under the final rule informal resolution will be attempted in each case.

Comments: Carrier comments generally support the proposed termination process but a number of commenters from airports and financial institutions express concern about the Administrator's ability to terminate PFC collection. According to the commenters, the ability to terminate could complicate the use of bonds backed by PFC revenue. These comments claim the perceived risk of termination would require bonds to be issued at higher rates of interest. Commenters recommend limiting the ability of the Administrator to terminate PFC's, including a requirement of informal

resolution, before a more formal process is instituted.

Final rule: The final rule requires the Administrator undertake informal resolution with the public agency to attempt to solve any concerns before a formal process is begun. Other changes in the termination procedure made in response to public agency and financial market concerns are discussed below.

Section 158.85 Termination of Authority To Impose PFC's (Proposed § 158.83)

If informal resolution was not successful, the NPRM proposed a process to begin proceedings to terminate PFC authority. The Administrator was required to publish a notice of proposed termination in the **Federal Register**, including the basis for the proposed action, and any corrective action the public agency could take. The proposed date for comments and corrective action would have been 30 days after the notice. If requested by the public agency, a hearing would have been held prior to the Administrator's final decision. The Administrator would then publish a notice of the final decision in the **Federal Register**. The decision could be to terminate the authority to impose a PFC in whole or in part or to allow full continued authority.

Comments: Airports and financial institutions are concerned with the uncertainty associated with FAA's unilateral ability to terminate PFC authority. Airports state that the uncertainty would result in greater debt costs, ultimately resulting in higher project costs. Representatives of the financial community question the ability to finance a bond if PFC authority is terminated. These commenters argue that continuity of PFC revenue pledged against debt service is essential, and termination should occur only after all other courses of action have been exhausted including AIP offset. If termination is required, it should come only after informal resolution as well as a public hearing, with specific time frames for each step of the process. Some commenters suggest PFC authority should not be terminated if PFC revenue is pledged to a bond until the bond is liquidated. Some commenters recommend disapproval of future amendments or authority to impose new PFC's rather than termination. A number of commenters also recommended this section include termination for violation of sections 9304(e) and 9307 of the Airport Noise and Capacity Act.

Final rule: The final rule retains the Administrator's ability to terminate PFC authority. This authority is provided for in the statute. However, the process has been revised significantly to assure all parties that every effort would be made to resolve a problem before formal termination. A process that will last a minimum of 130 days is required before the Administrator can terminate PFC authority. In addition to a mandatory attempt at informal resolution as provided in § 158.83, the rule continues to require the Administrator to publish a notice of proposed termination, but allows for no less than 60 days rather than 30 for corrective action. If corrective action is not taken, the Administrator will provide the public agency with an opportunity to be heard. This hearing will be in a form and manner appropriate to the circumstances, and will occur after at least 30 days following a second notice in the **Federal Register**. The Administrator will then publish a third notice in the **Federal Register** of the final decision, and any prescribed corrective action that is still possible. If corrective action is still possible, the public agency will also have an additional 30 days to take the corrective action before the Administrator notifies carriers to discontinue collection.

The rule has not adopted the recommendation that a public agency be permitted to continue to receive PFC revenue in violation of this regulation if it has pledged the PFC revenue to bond payments. The FAA believes that it is inappropriate for the passenger, rather than the bond holder, to incur the risk for the bond. Moreover, the public agency's choice of a method for financing a project cannot be a basis for limiting that agency's duty to carry out the requirements of the statute.

Section 158.87 Loss of Federal Airport Grant Funds (Proposed: § 158.85)

As proposed, this section would have allowed the Administrator to reduce the public agency's AIP funds if PFC collection were excessive or if PFC revenue were not being used as approved.

Comments: As discussed earlier, many commenters believe AIP funds should be reduced rather than allow the Administrator to terminate PFC authority. An industry group commented that FAA should not be able to reduce future AIP funds without a public hearing.

Final rule: The final rule retains the Administrator's ability to offset AIP funds if PFC revenue are not used appropriately rather than terminate PFC authority. However, the FAA does not believe the ability to reduce AIP funds alone in place of termination would be adequate. PFC revenue could greatly exceed AIP funds, reducing the incentive for a public agency to take corrective action. In addition, the Administrator may have to wait for up to a year to reduce any AIP funds if the airport has already received its funds for the year. The statute, and therefore this rule, does not require a public hearing before such AIP offset. However, the public agency is likely to have had a hearing through the termination process.

Subpart F

Subpart F specifies how funds apportioned under the Airport Improvement Program would be reduced to public agencies controlling certain large and medium airports imposing a PFC, and the procedure for implementing such reductions.

Section 158.93 Public Agencies Subject To Reduction

Section 9111 of the statute requires that funds apportioned under Section 507(a)(1) of the Airport and Airway Improvement Act of 1982, be reduced at commercial service airports imposing a PFC and enplaning 0.25 percent or more of total annual enplanements in the United States. There are currently 71 airports in this category. Apportionments for all other commercial service airports would not be reduced.

As proposed, the apportionment would be reduced on an airport-by-airport basis rather than on the amount apportioned to a public agency for all airports controlled by the agency. If a public agency controlled more than one airport, the reduction in apportionments would be calculated separately for each airport.

Comments: Commenters point out that only passenger entitlement funds, and not cargo or state apportionments, should be reduced in return for authority to impose a PFC.

Final rule: No changes were made in this section because the NPRM was clear in stating that funds apportioned under Section 507(a)(1) of the AAIA would be reduced. That section applies only to apportionments to primary airports based on passenger counts.

Section 158.95 Implementation of Reduction.

The NPRM provided for apportionments to be reduced at large and medium hubs in the fiscal year following the date of PFC application approval. The apportionment in the fiscal year of approval would not be reduced. The amount of the reduction would have equaled 50 percent of the PFC revenue forecast for the fiscal year. However, a public agency would not

lose more than 50 percent of its apportioned funds and the annual calculation of AIP apportioned amounts would have reflected the reductions caused by PFC revenue.

The NPRM proposed adjustments in reductions to reflect actual results should forecasts prove inaccurate or should the charge expiration date change. The adjustment would occur in the apportionment calculation for the following year, except the total reduction would not exceed 50 percent of the otherwise apportioned amounts.

Comments: Several commenters suggest apportionment funds not available to the primary airport be granted to airports within the same general area or the same state. Other comments propose a hearing be held before any reductions in apportionments are made. One comment objects to the fact that apportionment would not be reduced in the same year as approval is granted to impose a PFC.

Final rule: The final rule is only slightly changed from the NPRM. The rule does not provide for returning apportioned funds to airports in the same state or area or for a hearing procedure. The Aviation Safety and Capacity Expansion Act, in sections 9111 and 9112, clearly states that apportioned funds will be reduced if a large or medium hub airport imposes a PFC and specifies how these funds will be made available for other airports.

The final rule retains the concept of reducing apportionments in the fiscal year immediately following the year in which the Administrator approves authority to impose a PFC. This eliminates the requirement to adjust apportioned levels throughout the year and to readjust the amount of foregone apportioned funds available to the categories of airports.

Appendix A—Assurances (Proposed: Appendix B Assurances)

The NPRM included a list of 12 numbered assurances to which a public agency would have been required to agree for approval of a PFC application. The assurances addressed a number of issues, ranging from the public agency's authority to impose a PFC to restrictions on airport rates, fees and charges. The FAA intended them to function much like conditions of approval. The use of assurances was proposed because of public agency familiarity with the use of assurances under the AIP. The assurances were intended to ensure that implementation of approved PFC projects would be consistent with the PFC statute and this regulation and that approval of the use of PFC revenue would not conflict with other FAA responsibilities related to airports.

The proposed assurances generated numerous comments. A few commenters suggest assurances are unnecessary, while several others believe the assurances should only include those directly referenced in the PFC legislation. Other commenters propose deletion or modification of specific assurances. Other comments request additional assurances on a variety of topics ranging from procedures for consultant selection to compliance with sections 9304 and 9307 of the ANCA.

The final rule retains the requirement for signed public agency assurances as part of the application process. This approach has worked well in the AIP context, and is consistent with the statutory authority to impose establish terms and conditions for approval. However, the FAA has modified a number of the individual assurances and deleted some in response to the comments. In addition, one new assurance has been added. The FAA's intent in the final rule has been to limit the assurances to subjects directly related to compliance with the PFC statute and this regulation, or to the safe and efficient use of the national airspace. The FAA agrees with the views expressed in many comments that the PFC regulation or assurances should not be used to address wholly unrelated airport practices.

For ease of understanding, each assurance proposed in the NPRM is discussed separately and identified by the assurance number listed in the NPRM. The final assurance number and reference is also given. Following this discussion, new assurances are addressed.

Assurance No. 1 Responsibility and Authority of Public Agency (Proposed Assurance No. 2)

As proposed, the public agency would certify through this assurance that it has legal authority to impose a PFC and carry out a project, that the governing body has properly authorized the filing of the application, and that the official submitting the application has been authorized to provide such additional information as may be required.

Some commenters believe it unnecessary to assure that future requirements for information will be complied with.

The final rule omits the reference to providing additional information. The regulation allows the Administrator to request this information without a separate assurance.

Assurance No. 2 Compliance With 14 CFR (Proposed: Assurance No. 1)

As proposed, the public agency would agree to comply with the PFC regulation through this assurance. The assurance is unchanged in the final rule.

Assurance No. 3 Compliance With Local Law and Regulations

As proposed, this assurance would have required the public agency to certify that it has complied with applicable local laws and regulations. In the final rule, the wording has been modified to allow a public agency to certify prospectively that it will comply. The latter assurance would be made in the case of an application for authority to impose a PFC when project implementation is not imminent.

Proposed Assurance No. 4 Fund Availability (Deleted)

As proposed, this assurance would have required the public agency to certify it had funds to pay for the non-PFC share of project costs and to pay for operations and maintenance of the project. Many commenters say an assurance that funds are currently available for future operation and maintenance of facilities is unrealistic, especially when approval is sought only to impose a PFC. Upon consideration of the comments, this assurance has been deleted from the final rule. The FAA agrees it is not realistic to ask public agencies to certify as to their financial condition many years in the future.

Assurance No. 4 Environmental, Airspace and Airport Layout Plan Requirements (Proposed Assurance No. 5)

As proposed, this assurance would have required the public agency to commit to comply with applicable regulations of the Council on Environmental Quality (CEQ) implementing NEPA. Some comments suggest Assurance 5 be deleted in its entirety as it is not necessary to ensure CEQ requirements are met.

In the final rule, the assurance has been substantially revised. The reference to CEQ regulations is eliminated. However, as revised, this assurance requires public agencies to have approved environmental and airspace studies and an approved ALP before using PFC revenue to implement a project. The assurance is particularly applicable when a public agency has received authority to impose a PFC without concurrent authority to use revenue. It provides additional notice to the public agency on the limits of its authority to use PFC revenue without

obtaining necessary Federal approvals and provides a means for the public agency to expressly acknowledge those limitations.

Proposed Assurance No. 6 Safety and Security Prerequisites (Deleted)

As proposed, this assurance would have required the public agency to commit to provide all safety and security equipment required by regulation at each of the airports under its control before imposing a PFC.

Some commenters suggest the deletion of Assurance 6 or at least rewriting it to require airports to meet current standards, not just minimum regulations.

This assurance has been deleted from the final rule. The FAA encourages public agencies to focus their use of PFC revenue, AIP grants and other funding sources on projects to improve airport safety and security, whether by construction or acquisition of up-to-date facilities and equipment. However, the FAA recognizes PFC revenue is local money and that under the statute PFC revenue may be used to finance projects that accomplish a number of objectives. The assurance has been deleted so as not to interfere with the flexibility provided by statute.

Assurance No. 5 Nonexclusivity of Contractual Agreements (Proposed Assurance No. 7)

As proposed, this assurance required the public agency to commit not to enter into long-term exclusive lease and use agreements for PFC-financed projects. The assurance also would have specified that such leases not preclude the funding, developing or assigning of new PFC-financed capacity. This assurance was intended to carry out the statutory prohibitions on such long-term leases and lease agreements.

As discussed above, some commenters argue for prohibiting all exclusive lease and use agreements. However, the statute itself prohibits exclusive agreements only when they are long-term. Therefore, this assurance is unchanged in the final rule.

Assurance No. 6 Carryover Provision (Proposed Assurance No. 8a)

As proposed, this assurance would have required the public agency to refrain from entering into a lease or use agreement for PFC-financed facilities that would automatically extend the term of the agreement in preference to a potentially competing carrier trying to negotiate for the use of those facilities. It was proposed to ensure lease and use agreements did not operate to limit the procompetitive effects of new facilities. In particular, it was intended to prevent short-term leases from effectively becoming long-term leases during extended negotiations with carriers over lease renewals. The proposed provision was part of a two-element assurance on competitive access.

The FAA did not receive significant comment on this element of proposed assurance 8. It is retained without change in the final rule, but it has been designated as a separate assurance to facilitate a clearer understanding of the requirement.

Assurance No. 7 Competitive Access (Proposed Assurance 8b)

As proposed, this assurance would have required a public agency to commit that any agreement for the use of a PFC-financed facility would prevent the carrier from using the PFC-financed facility if that carrier's existing exclusive-use facilities were not fully utilized or were not made available to other carriers.

Some commenters ask for a better definition of "fully utilized." Others ask that the assurance be deleted altogether.

Subject to technical, clarifying language changes, the assurance is retained in the final rule. It is intended to prevent tenant airlines from locking up new facilities, as well as those they may already lease under exclusive use provisions, and then leaving the latter facilities idle. It is thus retained to ensure that new PFC-financed facilities are actually available to foster competition.

The term "fully utilized" is retained in the assurances. If a different carrier could be accommodated at a facility without disrupting the incumbent carrier's operation at the facility, then the facility is not fully utilized.

Assurance No. 8 Rates, Fees and Charges (Proposed Assurance No. 9)

As proposed, this assurance requires the public agency to make three commitments with respect to rates and charges. (1) It would not treat PFC revenue as airport revenue when establishing a rate, fee or charge pursuant to contracts with carriers; (2) It would not include in the airport's rate base, for purposes of establishing rates, fees or charges, that portion of the capital costs of projects funded by PFC revenue; (3) It would not charge less for exclusive- or preferential-use terminal facilities, including gates, financed with PFC revenue than it charges for similar facilities financed by other means. This assurance was intended to conform to statutory requirements for public agency policies on rates, fees and charges if a PFC is imposed.

Some commenters ask for clarification of this assurance. They noted a potential conflict between the language of the second and third provision. The language of the third provision has been modified to indicate that it is applicable, notwithstanding the limitation provided in the preceding paragraph.

Assurance No. 9 Standards and Specifications (Proposed Assurance No. 10)

As proposed, this assurance would have required the public agency to commit to follow design, construction and equipment standards and specifications contained in FAA advisory circulars in effect on the application date. It was proposed to help ensure system-wide uniformity in the design and construction of airports.

Comments on this assurance range from proposals for complete deletion to modification of the assurance to permit use of state or local specifications and standards. One commenter requests using standards and specifications exceeding the FAA's.

The assurance is retained in the final rule with some modification. The FAA has concluded that the assurance is appropriate to further the objective of system-wide uniformity. The FAA will interpret the assurance to require that minimum standards be met, but not to preclude airports from exceeding these requirements where local policies call for such.

The advisory circulars covered by the assurance will be only those related to design, construction and equipment standards and specifications and will not include those related to such other areas as planning or consultant selection. Considering that PFC revenue is local money, the FAA has determined not to require compliance with standards that do not directly relate to achieving uniformity in airport design and construction. The FAA will develop and make available a list of the applicable advisory circulars.

The assurance has been changed to indicate that a project is to be carried out in accordance with standards and specifications in effect on the date of project approval rather than on the date of application submission. This change is necessary to accommodate the new provision in the rule that permits a public agency to apply for approval only to impose a PFC. In addition, the title has been changed to more accurately reflect the contents of the assurance.

Assurance No. 10 Recordkeeping and Audit (Proposed Assurance No. 11)

As proposed, this assurance would have required the public agency to commit to maintain an accounting record until 3 years after completion of a project or as long as PFC revenue is collected to finance the project. It was intended to help ensure that adequate financial records would be available to the Administrator throughout the period a PFC is imposed.

Some commenters suggest accounting records under this assurance be kept until the completion of the project, not for the duration of the PFC.

The assurance is modified in the final rule to require retention of records only for 3 years after completion of the project. Once the project is completed and its final costs are known, the public agency's compliance with the periodic reporting and auditing requirements should provide sufficient information to the FAA. A separate accounting record would be unnecessary.

Assurance No. 11 Reports (Proposed Assurance 12)

As proposed, this assurance would have required the public agency to commit to comply with the reporting requirements of subpart D of the rule, including the Administrator's reasonable requests for special reports. It was intended to provide clear notice and evidence of the public agency's acceptance of reporting obligations under the rule.

This assurance did not generate significant specific comment, and it is retained unchanged from the NPRM.

Assurance No. 12 Airport Noise and Capacity Expansion Act of 1990

This new assurance had no counterpart in the NPRM. The FAA has added it following consideration of the comments. Under the assurance, the public agency must acknowledge that it understands that provisions of the Airport Noise and Capacity Act require the Administrator to terminate authority to impose a PFC if the Administrator finds the public agency to be in violation of those provisions.

The assurance is intended to provide additional notice to the public agency of the link between compliance with the noise statute and the continued authority to impose a PFC. It also provides a ready means for the public agency to confirm it understands that linkage.

Miscellaneous Issues

Tax Status of PFC's

Seven respondents requested clarification of tax status of PFC's. All state that the PFC charges should not be subject to the 10 percent ticket tax, because PFC's are not part of the fare. The FAA agrees with this interpretation; however, the FAA had not been able to obtain a definitive interpretation from the Federal offices responsible for administering the tax.

Application of Department Policy on Price Advertising

To alleviate uncertainty about the application of the Department's price advertising policy to PFC's, the NPRM indicated that the Department tentatively had decided to allow carriers to state separately that "up to $12 per round trip in local airport charges may be collected in addition to the advertised price" in order to satisfy 14 CFR 399.84. The FAA received no negative comments on this issue. The Department has advised the FAA that it will make final its tentative decision.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements in this rule will become effective when they are approved by OMB.

Environmental Issues

The FAA tentatively concluded in the NPRM that issuance of this final rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A final environmental assessment has concluded that issuance of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A copy of this assessment has been placed in the docket.

Regulatory Evaluation Summary

This summary discusses the anticipated benefits and costs associated with implementing this final rule, which is based on section 9110 of the Aviation Safety and Capacity Expansion Act of 1990 (the Act). The regulatory evaluation contained in the docket provides more detail on the economic consequences of this regulatory action. In addition to a summary of the regulatory evaluation, this summary also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. It is available for review in the docket.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for consumers or for individual industries, government entities, or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.

Under the Act, the Administrator is authorized to approve applications by public agencies to impose PFC's. The Federal Government has discretion only over the procedures governing the application for and approval of PFC authority and the collection, handling, and use of PFC revenue. In addition, PFC revenue will be generated only as a consequence of a state or local initiative to impose a PFC. Finally, all such revenue accrues to the public agencies, not the Federal Government. Therefore, although the total annual revenue raised by passenger facility charges (PFC's) could easily exceed the $100 million per year threshold, the FAA, for several reasons, has determined that this rule is not "major" as defined in the executive order. As a result of this determination, the requirement of the Act is satisfied by a regulatory evaluation, rather than a full regulatory impact analysis.

Benefits and Costs of PFC-Funded Projects

This evaluation examines the impact of a final rule under which the FAA allows public agencies that control airports to impose PFC's. The rule requires that the air carriers collect these charges and remit them to public agencies that control commercial service airports. PFC revenue may be used to fund investments in various types of eligible projects.

A recent survey of airports indicated that total public spending on capital improvements, including items not eligible for Federal aid, was $4.5 billion in 1989. (The FAA and others have estimated that future investment needs for airport expansion, including work not eligible for Federal grants, will

continue at that level or more for the next 5 to 10 years.) PFC revenue of $1 billion per year could, therefore, finance 20 to 25 percent more in airport capital investment. The benefits and costs of these projects are discussed below.

Capacity Expansion. A major purpose for which PFC revenue may be used is the expansion of airport capacity on both airside and landside. Such investments can be expected to reduce airport delays. Some indication of the magnitude of the potential savings can be derived by noting that, for 1987, the total airside delay costs associated with the 100 largest airports in the U.S. have been estimated to be on the order of $11 billion. Landside delays, including those associated with on-airport roads and terminals would add significantly to the total of airport-related delays that were experienced.

A significant investment of PFC revenue for capacity expansion can be assumed to reduce airport-associated delay time. The benefits of capacity expansion vary with specific projects, but computer simulations for airport capacity planners have consistently shown very favorable benefit to cost ratios for major projects such as new runways. For example, if 20 percent of the estimated airport investments (about: $1 billion per year) were to reduce passenger airport delays by 10 percent, the value of time savings would be about $1.1 billion per year and the PFC-funded projects would yield benefits in excess of costs. Further, it is likely that the delay reductions from funding 20 percent of the desired investments would be in excess of 10 percent of current delays for two reasons. (1) Airport operators would have an incentive to make the best use of their new revenue by selecting as their investments the projects that have the greatest incremental benefits for the funds spent. (2) A large amount of this development will probably occur at the busiest airports, which are also the most congested and in greatest need of expansion.

Noise Mitigation. The FAA estimates that approximately $1.8 billion will be spent for noise mitigation or other environmental projects over the next 10 years. PFC revenue could be used to fund these noise mitigation projects. Like delays, noise impacts most often occur at the busiest airports. For example, 57 percent of the cost of noise mitigation projects planned over the next 10 years is concentrated at the 29 busiest primary airports.

When PFC's fund projects that benefit noise-impacted individuals, the investment (e.g., for soundproofing of existing structures or the purchase of impacted real estate) can be thought of as compensation to those individuals who have incurred an indirect cost of air travel. By financing these projects, travelers who pay PFC's are, in effect, reducing a subsidy that has been—or would otherwise be—involuntarily provided to them by noise-impacted individuals. Whether the avoided costs of noise pollution are less than the costs incurred for abatement can be estimated only on a case-by-case basis. To the extent that noise mitigation expenditures respond to expressed public concerns, there is an incentive to give priority to the projects that yield the greatest net benefits.

The availability of substantial PFC revenue is expected to facilitate investments in noise mitigation projects. Detailed benefit/cost analyses are problematical, however, because of the difficulty of fully expressing benefits in monetary terms. Individual projects, however, are carefully developed, analyzed, and discussed by public agencies and noise-impacted individuals to produce projects that address serious public concerns.

Enhanced Competition Among Air Carriers. Projects that furnish opportunities for enhanced competition between or among air carriers may be funded with PFC revenue. Benefits that may be conferred upon PFC payers as a result of enhanced competition are likely to be in the form of lower air fares and/or improved service that arise from the construction of gates at an airport that allow new entrants/new competition in a travel market. Such benefits to travelers are highly dependent on the policy followed by any new entrant and the reactions of competing carriers. For instance, a new entrant may offer significantly lower fares but be so constrained by the limited amount of available airport space that it is unable to increase its operations to the extent that other carriers are induced to lower their fares in order to compete. In the limiting case of a single dominant carrier and a small new entrant carrier, the dominant carrier may perceive that there is little to be gained by lowering fares. As a result, a new entrant may substantially duplicate existing fares and service. Lower fares are believed to be more likely in cases where the new entrant is able to provide substantial competition with incumbent carriers.

In the event that the use of PFC revenue, for instance for the construction of gates, results in enhanced competition and lower air fares at an airport, air carriers may suffer a reduction in profits. However, if the resulting lower prices result in a reduction in profits, much of the loss in profits is likely to become a benefit that is transferred to passengers. In addition, there may be a higher level of travel service provided so that the combined consumers' and producers' surplus for the airport would be increased.

Funds Shifted to Smaller Airports. Section 9111 of the Act requires that sponsors of airports that annually have more than 0.25 percent or more of total annual enplanements in the U.S. will have their Airport Improvement Program entitlement funds reduced by 50 percent of their projected PFC revenue—up to 50 percent of this entitlement. The funds released from entitlements to these large and medium hub airports are to be used under section 9112 of the Act as follows: 25 percent for a discretionary fund of which half is for small hub airports and 75 percent for a Small Airports Fund for use by general aviation airports and nonhub commercial service airports. It may be argued that the overall national airspace system is improved by (1) the increased capacity at larger airports and (2) increased capacity at smaller airports that would be unlikely to occur in the absence of the diversion of entitlement funds from larger to smaller airports. Sponsors of smaller airports may be unable to finance substantially improved facilities from funds raised at their airports in the absence of funds from outside sources. However, improvements at smaller airports may yield benefits through improved operations at nearby larger airports that the small airport operators are unable to fully capture through increased fees and charges. This can occur because reduced congestion at larger airports may result from the diversion of general aviation traffic to the smaller fields.

Handling of PFC Revenue and Compensation for these Costs.

Under §§ 158.51 and 158.53 of the rule, carriers are to be compensated for handling PFC's through the retention of a fixed fee per PFC plus earnings on the revenue "float" for the PFC's that they collect. The fixed fee is set at $0.12 per PFC for the first 3 years after the effective date of the rule, in order to provide compensation not only for collecting, handling, and remitting the revenue, but for the cost of establishing the system that carries out these functions. This fixed fee drops to $0.08 per PFC after 3 years. The amount of interest accrued annually on an account held by a carrier for payment to an airport will equal the applicable annual interest rate multiplied by the average balance held by the carrier. The average balance held by a carrier for payment to public agencies will depend on the total

fee revenue collected by the carrier, the payment schedule, and the applicable fixed fee. For example, with revenue of $1 billion per year, if the applicable interest rate (or earnings on the balance held) were 10 percent, and the payment schedule were as specified in the rule (in which revenue collected during each month are paid to the airports at the end of the month after the end of each month of collection) annual earnings on the float could be approximately $12 million.

It is noted that, should $1 billion per year be collected in $3 PFC's, 333 million PFC's would be handled. With earnings on the float of approximately $12 million per year, interest earnings would be on the order of $0.036 per PFC collected. Under these assumptions, compensation per $3 PFC collected would be approximately $0.156 during the initial 3-year period and $0.116 thereafter.

The FAA has attempted to structure the rule so as to achieve maximum cost effectiveness in administration (i.e., in ticketing collection burdens, as well as reporting, recordkeeping and auditing requirements). For example, it is specified in Subpart C that all PFC's be collected and remitted by the issuing carrier, thus eliminating interline settlements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. This Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for operators of aircraft for hire for complying with review requirements in FAA rulemaking actions. The lowest of these categories is indicated to be $3,300 per year in 1983 dollars for unscheduled operators of 9 or fewer aircraft. This level is approximately $4,200 in 1990 dollars. Since provisions of the final rule allow the retention of a fixed fee plus the earning of interest on PFC revenue held in order to compensate carriers for the costs of administering PFC's, the net cost of collecting, handling, remitting, and reporting PFC's for such operators of aircraft should be small. There are numerous charter and air taxi operators that are believed to have 9 or fewer aircraft. Small carriers are provided protection against auditing costs by § 158.69(b) of the rule, which requires at least annual audits only for collecting carriers that collect more than 50,000 PFC's annually. This level of PFC collection implies compensation for PFC collection on the order of $5,800 to $7,800 per year. Further protection against PFC collection burden is given by § 158.11, which provides that "a public agency may request that collection of PFC's by any class of air carriers or foreign air carriers not be required, if the number of passengers enplaned by the carriers in the class constitute no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed." The conclusion is that the imposition of PFC's will not have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

The impact of PFC administration costs on small airports is not believed to be a problem, since PFC's are to be initiated by public agencies that control airports. These agencies are assumed to assess a PFC only if they have reason to expect that the revenue collected will be in excess of the costs of establishing the charge and managing the revenue that results.

Trade Impact Assessment

The provisions of this rule are expected to have little or no impact on trade for both U.S. firms (including air carriers) doing business in foreign countries and foreign firms (including air carriers) doing business in the United States. PFC's are not likely to cause a significant increase in costs for most international travel. It is noted that the $3 per airport limitation on PFC's per enplaned passenger and the generally higher cost per ticket for international travel to or from the United States than for domestic travel make PFC's imposed on international travel a smaller proportion of the cost of international travel than domestic travel. Although PFC's will raise the amounts paid for tickets for international travel, in many cases, the airport capacity improvements financed with the resulting revenue may result in improvements in the amenities afforded travelers. These improvements may include reduced delay that is made possible by increased airport capacity that more than compensates passengers for the cost of the PFC. In addition, while the rule permits carriers to limit collection to the last airport at which a passenger enplanes before departing from the U.S. when a ticket is issued outside the U.S., this provision applies equally to air carriers and foreign air carriers. Likewise, for tickets issued in the U.S., the rule imposes the same requirements on foreign air carriers.

Federalism Implications

The regulations implement a new statute that authorizes state and local public agencies that control commercial service airports to impose PFC's at their airports. While the imposition of PFC's would be a local decision, the statute imposes Federal requirements on the airport operator (e.g., the local consultation requirement) and requires Federal oversight (through the approval and audit provisions).

The provisions of the regulations are intended to impose on state and local agencies the minimum restrictions and requirements that are mandated by the statute, including the Federal oversight role contemplated by the PFC statute and other legislation or regulations that would pertain to a PFC-financed project (e.g., environmental requirements).

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 158

Air carriers, Airport, Air transportation, Passenger facility charge.

The Final Rule

Accordingly, the FAA adds a new part 158 of the Federal Aviation Regulations, 14 CFR part 158, as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

Subpart A—General

Subpart B—Application and Approval

Subpart C—Collection, Handling, and Remittance of PFC's

Subpart D—Reporting, Recordkeeping and Audits

Subpart E—Termination

Subpart F—Reduction in Airport Improvement Program Apportionments

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101-508, Title II, Subtitle B, November 5, 1990); 49 U.S.C. App. 2206 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; section 9304(e) and 9307 of the Airport Noise and Capacity Act of 1990, Pub. L. 101-508, Title IX, Subtitle D.

Subpart A—General

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC's) as may be approved by the Administrator of the Federal Aviation Administration (FAA) pursuant to section 1113(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513(e)), and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds apportioned under section 507(a) of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2206(a)), to a large or medium hub airport that imposes a PFC.

§ 158.3 Definitions.

The following definitions apply in this part:

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport capital plan means a capital improvement program that lists airport-related planning, development or noise compatibility projects expected to be accomplished with anticipated available funds.

Airport layout plan (ALP) means a plan showing the existing and proposed airport facilities and boundaries in a form prescribed by the Administrator.

Airport revenue means revenue generated by a public airport (1) through any lease, rent, fee, PFC or other charge collected, directly or indirectly, in connection with any aeronautical activity conducted on an airport that it controls; or (2) In connection with any activity conducted on airport land acquired with Federal financial assistance, or with PFC revenue under this part, or conveyed to such public agency under the provisions of any Federal surplus property program or any provision enacted to authorize the conveyance of Federal property to a public agency for airport purposes.

Air travel ticket means all documents pertaining to a passenger's complete itinerary necessary to transport a passenger by air, including passenger manifests.

Allowable cost means the reasonable and necessary costs of carrying out an approved project including costs incurred prior to and subsequent to the approval to impose a PFC, and making payments for debt service on bonds and other indebtedness incurred to carry out such projects. Allowable costs include only those costs incurred on or after November 5, 1990.

Approved project means a project for which use of PFC revenue has been approved under this part. Specific projects contained in a single or multi-phased project or development described in an airport capital plan may also be approved separately.

Bond financing costs means the costs of financing a bond and includes such costs as those associated with issuance, underwriting discount, original issue discount, capitalized interest, debt service reserve funds, initial credit enhancement costs, and initial trustee and paying agent fees.

Charge effective date means the date on which carriers are obliged to collect a PFC.

Charge expiration date means the date on which carriers are to cease to collect a PFC.

Collecting carrier means an issuing carrier or other carrier collecting a PFC, whether or not such carrier issues the air travel ticket.

Collection means the acceptance of payment of a PFC from a passenger.

Commercial service airport means a public airport (as defined by 49 U.S.C. app. 2202(17)) determined by the Secretary to enplane annually 2,500 or more passengers and to receive scheduled passenger service of aircraft.

Debt service means payments for such items as principal and interest, sinking funds, call premiums, periodic credit enhancement fees, trustee and paying agent fees, coverage, and remarketing fees.

Exclusive long-term lease or use agreement means an exclusive lease or use agreement between a public agency and an air carrier or foreign air carrier with a term of 5 years or more.

FAA Airports office means a regional, district or field office of the Federal Aviation Administration that administers Federal airport-related matters.

Implementation of an approved project means: (1) With respect to construction, issuance to a contractor of notice to proceed or the start of physical construction; (2) with respect to nonconstruction projects other than property acquisition, commencement of work by a contractor or public agency to carry out the statement of work; or (3) with respect to property acquisition projects, commencement of title search,

surveying, or appraisal for a significant portion of the property to be acquired.

Issuing carrier means any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock is used in issuing such ticket by an agent.

One-way trip means any trip that is not a round trip.

Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce.

PFC means a passenger facility charge covered by this part imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Project means airport planning, airport land acquisition or development of a single project, a multi-phased development program, (including but not limited to development described in an airport capital plan) or a new airport for which PFC financing is sought or approved under this part.

Public agency means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State or local law; a tax-supported organization; or an Indian tribe or pueblo that controls a commercial service airport.

Round trip means a trip on a complete air travel itinerary which terminates at the origin point.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

Unliquidated PFC revenue means revenue received by a public agency from collecting carriers but not yet used on approved projects.

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of $1.00, $2.00, or $3.00 on passengers enplaned at such an airport. No public agency may impose a PFC under this part unless authorized by the Administrator. No State or political subdivision or agency thereof that is not a public agency may impose a PFC covered by this part.

§ 158.7 Exclusivity of authority.

(a) No State or political subdivision or agency thereof may impair the imposition of a PFC, collection of such PFC, or use of PFC revenue by a public agency in accordance with this part.

(b) No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of such public agency to impose a PFC or use the PFC revenue in accordance with this part.

§ 158.9 Limitations.

(a) No public agency may impose a PFC on any passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route under section 419 of the Federal Aviation Act (49 U.S.C. app. 1389). The Administrator makes available a list of carriers and eligible routes determined by the Department of Transportation for which PFC's may not be imposed under this section.

(b) No public agency may require a foreign airline that does not serve a point or points in the U.S. to collect a PFC from a passenger.

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers.

Subject to the requirements of this part, a public agency may request under § 158.25 or § 158.37 that collection of PFC's by any class of air carriers or foreign air carriers not be required if the number of passengers enplaned by the carriers in the class constitutes no more than one percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed.

§ 158.13 Use of PFC revenue.

PFC revenue, including any interest earned after such revenue has been remitted to a public agency, may be used only to finance the allowable costs of approved projects at any airport the public agency controls.

(a) *Total cost.* PFC revenue may be used to pay all or part of the allowable cost of an approved project.

(b) *Bond-associated debt service and financing costs.* (1) PFC revenue may be used to pay debt service and financing costs incurred on that portion of a bond issued to carry out approved projects.

(2) If bond documents require that PFC revenue be commingled in the general revenue stream of the airport controlled by the public agency and pledged generally for the benefit of holders of obligations issued thereunder, PFC revenue is deemed to have been used to pay the costs covered in § 158.13 (b)(1) if—

(i) An amount equal to that portion of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent that the amount of PFC revenue collected in any year exceeds the amount of debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(c) *Combination of PFC revenue and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an approved project. Such projects shall be subject to the recordkeeping and auditing requirements set forth in subpart D of this part, in addition to the reporting, recordkeeping and auditing requirements imposed pursuant to the Airport and Airway Improvement Act of 1982 (AAIA).

(d) *Non-Federal share.* PFC revenue may be used to meet the non-Federal share of the cost of projects funded under the Federal airport grant program.

(e) *Approval of project following approval to impose a PFC.* The public agency shall not use PFC revenue or interest earned thereon except on an approved project.

§ 158.15 Project eligibility.

(a) To be eligible, a project must—

(1) Preserve or enhance safety, security, or capacity of the national air transportation system;

(2) Reduce noise or mitigate noise impacts resulting from an airport; or

(3) Furnish opportunities for enhanced competition between or among air carriers.

(b) Eligible projects are—

(1) Airport development eligible under the AAIA;

(2) Airport planning eligible under the AAIA;

(3) Terminal development as described in 49 U.S.C. App. 2212(b);

(4) Airport noise compatibility planning as described in 49 U.S.C. App. 2103(b);

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. App. 2104(c), without regard to whether the measures have been approved pursuant to 14 CFR part 150; or

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concessions.

Subpart B—Application and Approval

§ 158.21 General.

This subpart specifies the consultation and application requirements under which a public agency may obtain approval to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments and establishes requirements for use of excess PFC revenue.

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* Prior to submitting an application to the FAA for authority to impose a PFC under § 158.25(b) and for project approval under § 158.25(c), a public agency shall provide written notice to all air carriers and foreign air carriers operating at the airport except those air carriers that the public agency may choose to request not to collect PFC's as provided by § 158.11. The notice shall include—

(1) Descriptions of projects being considered for funding by PFC's;

(2) The PFC level, the proposed charge effective date, the estimated charge expiration date and the estimated total PFC revenue;

(3) For a request by a public agency that any class or classes of carriers not be required to collect the PFC—

(i) The designation of each such class,

(ii) The names of the carriers belonging to each such class, to the extent the names are known,

(iii) The estimated number of passengers enplaned annually by each such class, and

(iv) The public agency's reasons for requesting that carriers in each such class not be required to collect the PFC; and

(4) Except as provided in § 158.25(c)(2), the date and location of a meeting at which the public agency will present such projects to air carriers and foreign air carriers operating at the airport.

(b) *Meeting.* The meeting required by paragraph (a)(4) of this section shall be held no sooner than 30 days nor later than 45 days after issuance of the written notice required by paragraph (a) of this section. At or before the meeting, the public agency shall provide air carriers and foreign air carriers with—

(1) A description of projects;

(2) An explanation of the need for the projects; and

(3) A detailed financial plan for the projects, including—

(i) the estimated allowable project costs allocated to major project elements;

(ii) The anticipated total amount of PFC revenue that will be used to finance the projects; and

(iii) The source and amount of other funds, if any, needed to finance the projects.

(c) *Requirements of air carriers and foreign air carriers.* (1) Within 30 days following issuance of the notice required by paragraph (a) of this section, each carrier must provide the public agency with a written acknowledgement that it received the notice.

(2) Within 30 days following the meeting, each carrier must provide the public agency with a written certification of its agreement or disagreement with the proposed project. A certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

(3) If a carrier fails to provide the public agency with timely acknowledgement of the notice or timely certification of agreement or disagreement with the proposed project, the carrier is considered to have certified its agreement.

§ 158.25 Applications.

(a) *General.* This section specifies the information to be submitted by a public agency when applying for the authority to impose a PFC and for the authority to use PFC revenue on a project. A public agency may apply for the authority to impose a PFC at any commercial service airport it controls to finance airport-related projects to be carried out at that airport or at any existing or proposed airport which the public agency controls. A public agency may apply for the authority to impose a PFC in advance of or concurrent with an application to use PFC revenue. Applications shall be submitted in a manner and form prescribed by the Administrator and shall include the information required under paragraphs (b) or (c), or both, of this section.

(b) *Application for authority to impose a PFC.* This paragraph sets forth the information to be submitted by all public agencies seeking authority to impose a PFC. A separate application shall be submitted for each airport at which a PFC is to be imposed. The application shall be signed by an authorized official of the public agency, and, unless otherwise authorized by the Administrator, must include the following:

(1) The name and address of the public agency.

(2) The name and telephone number of the official submitting the application on behalf of the public agency.

(3) The official name of the airport at which the PFC is to be imposed.

(4) The official name of the airport at which a project is proposed.

(5) A copy of the airport capital plan or other documentation of planned improvements for each airport at which a PFC financed project is proposed.

(6) A description of each project proposed.

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in § 158.15(a). In its justification for any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives.

(8) The charge to be imposed on each enplaned passenger.

(9) The proposed charge effective date.

(10) The estimated charge expiration date.

(11) A summary of consultation with air carriers and foreign air carriers operating at the airport, including—

(i) A list of such carriers and those notified;

(ii) A list of carriers that acknowledged receipt of the notice provided § 158.23(a);

(iii) Lists of carriers that certified agreement and that certified disagreement with the project; and

(iv) A summary of substantive comments by carriers contained in any certifications of disagreement with the project, and the public agency's reasons for proceeding.

(12) If the public agency is also filing a request under § 158.11—

(i) The request;

(ii) A copy of the information provided to the carriers under § 158.23(a)(3);

(iii) A copy of the carriers' comments with respect to such information;

(iv) A list of any class or classes of carriers that would not be required to collect a PFC if the request is approved; and

(v) The public agency's reasons for submitting the request in the face of any opposing comments.

(13) A copy of information regarding the financing of the project presented to the carriers and foreign air carriers under § 158.23 of this part and as revised during consultation.

(14) For an application not accompanied by a concurrent

application for authority to use PFC revenue:

(i) A description of any alternative methods being considered by the public agency to accomplish the objectives of the project;

(ii) A description of alternative uses of the PFC revenue to ensure such revenue will be used only on eligible projects in the event the proposed project is not approved;

(iii) A timetable with projected dates for completion of project formulation activities and submission of an application to use PFC revenue; and

(iv) A projected date of project implementation and completion.

(15) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(16) Such additional information as the Administrator may require.

(c) *Application for authority to use PFC revenue.* A public agency may use PFC revenue only for projects approved under this paragraph. This paragraph sets forth the information that a public agency shall submit, unless otherwise authorized by the Administrator, when applying for the authority to use PFC revenue to finance specific projects.

(1) An application submitted concurrently with an application for the authority to impose a PFC, must include:

(i) The information required under paragraphs (b) (1) through (13) of this section;

(ii) A signed certification that—

(A) For projects required to be shown on an ALP, the ALP depicting the project has been approved by the FAA and the date of such approval;

(B) All environmental reviews required by the National Environmental Policy Act (NEPA) of 1969 have been completed and a copy of the final FAA environmental determination with respect to the project has been approved, and the date of such approval, if such determination is required; and

(C) The final FAA airspace determination with respect to the project has been completed, and the date of such determination, if an airspace study is required.

(iii) The estimated project implementation date, schedule and completion date; and

(iv) The information required by § 158.25(b)(25) and (16).

(2) An application where the authority to impose a PFC has previously been approved—

(i) Shall be preceded by further consultation with air carriers and foreign air carriers as set forth under § 158.23 of this part, except that the meeting required under § 158.23(a)(4) is optional; and

(ii) Shall include, in addition to a summary of further consultation conducted under paragraph (c)(2)(i) of this section, the following, updated and revised where appropriate—

(A) The information required by paragraphs (b) (1), (2), (4), (5), (6), (7), (10) and (13) of this section;

(B) The information required by paragraph (c)(1)(ii) of this section; and

(C) The information required by paragraphs (b) (15) and (16) of this section.

§ 158.27 Review of applications.

(a) *General.* This section describes the process for review of all applications filed under § 158.25 of this part.

(b) *Determination of completeness.* Within 30 days after receipt of an application by the FAA Airports office, the Administrator determines whether the application substantially complies with the requirements of § 158.25.

(c) *Process for substantially complete application.* If the Administrator determines the application is substantially complete, the following procedures apply:

(1) The Administrator advises the public agency by letter that its application is substantially complete.

(2) The Administrator publishes a notice in the Federal Register advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (e) of this section. A copy of the notice is also provided to the public agency.

(3) The public agency—

(i) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(ii) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(4) Following review of the application, public comments and any other information obtained under paragraph (g) of this section, the Administrator issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(d) *Process for applications not substantially complete.* If the Administrator determines an application is not substantially complete, the following procedures apply:

(1) The Administrator notifies the public agency in writing that its application is not substantially complete. The notification will list the information required to complete the application.

(2) Within 15 days after the Administrator sends such notification, the public agency shall advise the Administrator in writing whether it intends to supplement its application.

(3) If the public agency declines to supplement the application, the Administrator follows the procedures for review of an application set forth in paragraph (c) of this section and issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(4) If the public agency supplements its application, the original application is deemed to be withdrawn for purposes of applying the statutory deadline for the Administrator's decision. Upon receipt of the supplement, the Administrator issues a final decision approving or disapproving the supplemented application, in whole or in part, no later than 120 days after the supplement was received by the FAA Airports office.

(e) *The Federal Register notice.* The Federal Register notice includes the following information:

(1) The name of the public agency and the airport at which the PFC is to be imposed;

(2) A brief description of the PFC project, the level of the proposed PFC, the proposed charge effective date, the proposed charge expiration date and the total estimated PFC revenue;

(3) The address and telephone number of the FAA Airports office at which the application may be inspected;

(4) The Administrator's determination on whether the application is substantially complete and any information required to complete the application; and

(5) The due dates for any public comments.

(f) *Public comments.*

(1) Interested persons may file comments on the application within 30 days after publication of the Administrator's notice in the Federal Register.

(2) Three copies of these comments shall be submitted to the FAA Airports office identified in the Federal Register notice.

(3) Commenters shall also provide one copy of their comments to the public agency.

(4) Comments from air carriers and foreign air carriers may be in the same form as provided to the public agency under § 158.23.

§ 158.29 The Administrator's decision.

(a) *Authority to impose a PFC.* (1) An application to impose a PFC will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives set forth in § 158.15(a);

(iii) The project meets the criteria set forth in § 158.15(b);

(iv) The collection process, including any request by the public agency not to require a class of carriers to collect PFC's, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law;

(v) The public agency has not been found to be in violation of section 9304(e) or section 9307 of the Airport Noise and Capacity Act of 1990; and

(vi) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, PFC level, total approved PFC revenue, duration of authority to impose and earliest permissible charge effective date.

(b) *Authority to use PFC revenue on an approved project.* (1) An application for authority to use PFC revenue will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives set forth in § 158.15(a);

(iii) The project meets the criteria set forth in § 158.15(b); and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), 40 U.S.C. have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

(3) Approval to use PFC revenue to finance a project shall be construed as approval of that project.

(c) *Disapproval of application.* (1) If an application is disapproved, the Administrator notifies the public agency in writing of the decision and the reasons for the disapproval.

(2) A public agency reapplying for approval to impose or use a PFC shall comply with §§ 158.23 and 158.25 of this part.

(d) The Administrator publishes a monthly notice of PFC approvals and disapprovals in the **Federal Register**.

§ 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementation of a project approved under § 158.29 is authorized to impose a PFC until—

(a) The charge expiration date is reached;

(b) The total PFC revenue collected plus interest thereon will equal the allowable cost of the approved project;

(c) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(d) The public agency is determined by the Administrator to be in violation of section 9304(e) or 9307 of the Airport Noise and Capacity Act of 1990 (Pub. L. 101–508, Title IX, Subtitle D), and the authority to collect the PFC is terminated under that statute's implementing regulations under this title.

§ 158.33 Duration of authority to impose a PFC before project implementation.

(a) A public agency shall not impose a PFC beyond the lesser of the following—

(1) 2 years after approval to use PFC revenue on an approved project if the project has not been implemented, or

(2) 5 years after the charge effective date if an approved project is not implemented.

(b) If, in the Administrator's judgment, the public agency has not made sufficient progress toward implementation of an approved project within the times specified in paragraph (a) of this section, the Administrator begins termination proceedings under subpart E of this part.

(c) The authority to impose a PFC following approval shall automatically expire without further action by the Administrator on the following dates:

(1) 3 years after the charge effective date unless—

(i) The public agency has filed an application for approval to use PFC revenue for an eligible project that is pending before the FAA;

(ii) An application to use PFC revenue has been approved; or

(iii) A request for extension (not to exceed 2 years) to submit an application for project approval, under § 158.35, has been granted; or

(2) 5 years after the charge effective date unless the public agency has obtained project approval.

(d) If the authority to impose a PFC expires under paragraph (c) of this section, the public agency must provide the FAA with a list of the air carriers and foreign air carriers operating at the airport and all other collecting carriers that have remitted PFC revenue to the public agency in the preceding 12 months. The FAA notifies each of the listed carriers to terminate PFC collection no later than 30 days after the date of notification by the FAA.

(e) Restriction on reauthorization to impose a PFC. Whenever the authority to impose a PFC has expired or been terminated under this section, the Administrator will not grant new approval to impose a PFC in advance of implementation of an approved project.

§ 158.35 Extension of time to submit application to use PFC revenue.

(a) A public agency may request an extension of time to submit an application to use PFC revenue after approval of an application to impose PFC's. At least 30 days prior to submitting such request, the public agency shall publish notice of its intention to request an extension in a local newspaper of general circulation and shall request comments. The notice shall include progress on the project, a revised schedule for obtaining project approval and reasons for the delay in submitting the application.

(b) The request shall be submitted at least 120 days prior to the charge expiration date and, unless otherwise authorized by the Administrator, shall be accompanied by the following:

(1) A description of progress on the project application to date.

(2) A revised schedule for submitting the application.

(3) An explanation of the reasons for delay in submitting the application.

(4) A summary financial report depicting the total amount of PFC revenue collected plus interest, the projected amount to be collected during the period of the requested extension, and any public agency funds used on the project for which reimbursement may be sought.

(5) A summary of any further consultation with air carriers and foreign air carriers operating at the airport.

(6) A summary of comments received in response to the local notice.

(c) The Administrator reviews the request for extension and accompanying information, to determine whether—

(1) The public agency has shown good cause for the delay in applying for project approval;

(2) The revised schedule is satisfactory; and

(3) Further collection will not result in excessive accumulation of PFC revenue.

(d) The Administrator, upon determining that the agency has shown good cause for the delay and that other elements of the request are satisfactory, grants the request for extension to the public agency. The Administrator advises the public agency in writing not more than 90 days after receipt of the request. The duration of the extension shall be as specified in § 158.33 of this part.

§ 158.37 Amendment of approved PFC.

(a) A public agency may, without consultation or approval by the Administrator, institute a decrease in the level of PFC to be collected from each passenger, institute a decrease in the total PFC revenue, or an increase in the total approved PFC revenue of 15 percent or less. The public agency shall notify the collecting carriers and the FAA in writing of these changes. Any new charge will be effective on the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(b) Subject to paragraph (b)(1) or (b)(2) of this section, an approved PFC may be amended to increase the level of PFC to be collected from each passenger, increase the total approved PFC revenue by more than 15 percent, materially alter the scope of an approved project, establish a new class of carriers under § 158.11 or amend any such class previously approved. The public agency must submit to the Administrator a notification of any proposal to institute such an amendment. Such notification shall include written evidence of further consultation with and agreement or disagreement by the air carriers and foreign air carriers operating at the airport, justification for the amendment, and such other information as may be requested by the Administrator.

(1) In the event of no carrier disagreement with a change proposed under paragraph (b) of this section, the public agency may institute the proposed amendment unless, within 30 days after providing the notification required under that paragraph, it is notified otherwise by the Administrator. The public agency shall notify the carriers of the effective date of any change to the approved PFC resulting from the amendment, subject to the limitation that the effective date of any new charge shall be no earlier than the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(2) In the event of any carrier disagreement with a change proposed under paragraph (b) of this section, the public agency shall submit a request to the Administrator that the proposed amendment be approved. In addition to the notification and written evidence required under that paragraph, the public agency shall submit the reasons presented by the carriers for disagreeing with the proposed amendment, its reasons for requesting the amendment in the face of such disagreement, and such other information as may be requested by the Administrator. The Administrator reviews and approves or disapproves the amendment within 120 days of receipt of the request following such consultation, public notice and opportunity for comment as the Administrator may deem appropriate. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section.

§ 158.39 Use of excess PFC revenue.

(a) If the amount of PFC revenue remitted to the public agency, plus interest, exceeds allowable costs of the project, excess funds shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(b) For bond-financed projects, any excess PFC revenue collected under debt servicing requirements shall be retained by the public agency and used for approved projects or retirement of outstanding PFC-financed bonds.

(c) When the authority to impose a PFC has expired or has been terminated, accumulated PFC revenue shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(d) Within 30 days after the authority to impose a PFC has expired or has been terminated, the public agency shall present a plan to the appropriate FAA Airports office to begin using accumulated PFC revenue. The plan shall include a timetable for the submission of any necessary application under § 158.25(c) of this part. If the public agency fails to submit such a plan or if the plan is not acceptable to the Administrator, the Administrator offsets Federal airport grant program apportioned funds.

Subpart C—Collection, Handling, and Remittance of PFC's

§ 158.41 General.

This subpart contains the requirements for notification, collection, handling and remittance of PFC's.

§ 158.43 Public agency notification to collect PFC's.

(a) Following approval of an application to impose a PFC under subpart B of this part, the public agency shall notify the air carriers and foreign air carriers required to collect PFC's at its airport of the Administrator's approval. Each notified carrier shall notify its agents, including other issuing carriers, of the collection requirement.

(b) The notification shall be in writing and contain at a minimum the following information:

(1) The level of PFC to be imposed.

(2) The total revenue to be collected.

(3) The charge effective date which will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

(4) The proposed charge expiration date.

(5) A copy of the Administrator's notice of approval.

(6) The address where remittances and reports are to be filed by carriers.

(c) The public agency shall notify carriers required to collect PFC's at its airport of changes in the charge expiration date. Each notified carrier shall notify its agents, including other issuing carriers, of such changes.

(d) The public agency shall provide a copy of the notification to the appropriate FAA Airports office.

§ 158.45 Collection of PFC's on tickets issued in the U.S.

(a) On and after the charge effective date, tickets issued in the U.S. shall include the required PFC except as provided in paragraphs (c) and (d) of this section.

(1) Issuing carriers shall be responsible for all funds from time of collection to remittance.

(2) The appropriate charge is the PFC in effect at the time the ticket is issued.

(3) Issuing carriers and their agents shall collect the PFC's based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(b) Issuing carriers and their agents shall note as a separate item on each air travel ticket upon which a PFC is shown,

the total amount of PFC's paid by the passenger and the airports for which the PFC's are collected.

(c) For each one-way trip shown on the complete itinerary of an air travel ticket, issuing air carriers and their agents shall collect a PFC from a passenger only for the first two airports where PFC's are imposed. For each round trip, a PFC shall be collected only for enplanements at the first two enplaning airports and the last two enplaning airports where PFC's are imposed.

(d) Issuing carriers and their agents shall not collect PFC's from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route under section 419 of the Federal Aviation Act (49 U.S.C. App. 1389).

(e) Collected PFC's shall be distributed as noted on the air travel ticket.

(f) Issuing carriers and their agents shall stop collecting the PFC's on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

§ 158.47 Collection of PFC's on tickets issued outside the U.S.

(a) With respect to tickets issued outside the U.S., an air carrier or foreign air carrier may follow the requirements of either § 1.58.45 of this part or this section.

(b) Notwithstanding any other provisions of this part, no foreign airline is required to collect a PFC on air travel tickets issued on its own ticket stock unless it serves a point or points in the U.S.

(c) If an air carrier or foreign air carrier elects not to comply with § 158.45 for tickets issued outside the U.S.—

(1) The carrier is required to collect PFC's on such tickets only for the public agency controlling the last airport at which the passenger is enplaned prior to departure from the U.S.

(2) The carrier may collect the PFC either at the time the ticket is issued or at the time the passenger is last enplaned prior to departure from the U.S. The carrier may vary the method of collection among its flights.

(3) The carrier shall provide a written record to the passenger that a PFC has been collected. Such a record shall appear on or with the air travel ticket and shall include the same information as required by § 158.45(b), but need not be preprinted on the ticket stock.

(4) The carrier shall collect the PFC based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger and that require an adjustment of the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(d) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time the air travel ticket is issued—

(1) The carrier and its agents shall collect the required PFC on tickets issued on or after the charge effective date.

(2) The carrier is not required to collect PFC's at the time of enplanement for tickets sold by other air carriers or foreign air carriers or their agents.

(e) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time of enplanement, the carrier shall examine the air travel ticket of each passenger enplaning at the airport on and after the charge effective date and shall collect the PFC from any passenger whose air travel ticket does not include a written record indicating that the PFC was collected at the time of issuance.

(f) Collected PFC's shall be distributed as noted on the written record provided to the passenger.

(g) Collecting carriers shall be responsible for all funds from time of collection to remittance.

(h) Collecting carriers and their agents shall stop collecting the PFC on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

§ 158.49 Handling of PFC's.

(a) Collecting carriers shall establish and maintain a financial management system to account for PFC's in accordance with the Department of Transportation's Uniform System of Accounts and Reports (14 CFR part 241). For carriers not subject to 14 CFR part 241, such carriers shall establish and maintain an accounts payable system to handle PFC revenue with subaccounts for each public agency to which such carrier remits PFC revenue.

(b) PFC revenue must be accounted for separately by collecting carriers, but the revenue may be commingled with the carrier's other sources of revenue. The PFC revenue is to be regarded as trust funds held by collecting carriers as agents, for the beneficial interest of the public agencies imposing PFC's. All PFC revenue collected and held by the carriers are property in which the carriers hold only a possessory interest and not an equitable interest.

(c) Each collecting carrier shall be required to disclose the existence and amount of funds regarded as trust funds in financial statements.

§ 158.51 Remittance of PFC's.

Passenger facility charges collected by carriers shall be remitted to the public agency on a monthly basis. PFC revenue recorded in the accounting system of the carrier, as set forth in § 158.49 of this part, shall be remitted to the public agency no later than the last day of the following calendar month (or if that date falls on a weekend or holiday, the first business day thereafter).

§ 158.53 Collection Compensation.

As compensation for collecting, handling and remitting the PFC revenue, the collecting air carrier shall be entitled to:

(a) Retain $0.12 of each PFC remitted on or before [insert date 3 years after the effective date of this rule]. Thereafter, air carriers shall be entitled to $0.08 of each PFC remitted; and

(b) Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

Subpart D—Reporting, Recordkeeping and Audits

§ 158.61 General.

This subpart contains the requirements for reporting, recordkeeping and auditing of accounts maintained by collecting carriers and by public agencies.

§ 158.63 Reporting requirements: public agency.

(a) The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency with a copy to the appropriate FAA Airports office. The quarterly report shall include PFC revenue received from collecting carriers, interest earned, and expenditures for the quarter; cumulative PFC revenue received, interest earned, expenditures, and the amount committed for use on currently approved projects, including the quarter; and the current project schedule.

(b) The report shall be provided on or before the last day of the calendar month following the calendar quarter or other period agreed by the public agency and collecting carrier.

(c) For airports enplaning 0.25 percent or more of the total annual enplanements in the U.S. for the prior calendar year as determined by the Administrator, the public agency must provide the FAA, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year.

§ 158.65 Reporting requirement: Collecting carrier.

Each carrier collecting PFC's for a public agency shall file quarterly reports to the public agency unless otherwise agreed by the collecting carrier and public agency, providing an accounting of funds collected and funds remitted.

(a) Unless otherwise agreed by the collecting carrier and public agency, reports shall state the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of collected revenue withheld by the collecting carrier for reimbursement of expenses in accordance with § 158.53 of this part. The report shall include the dates and amounts of each remittance for the quarter.

(b) The report shall be filed on or before the last day of the calendar month following the calendar quarter or other period agreed by the collecting carrier and public agency for which funds were collected.

§ 158.67 Recordkeeping and auditing: Public agency.

(a) Each public agency shall keep any unliquidated PFC revenue remitted to it by collecting carriers on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. Interest earned on such PFC revenue shall be used, in addition to the principal, to pay the allowable costs of PFC-funded projects. PFC revenue may only be commingled with other public agency airport capital funds in deposits or interest bearing instruments.

(b) Each public agency shall establish and maintain for each approved application a separate accounting record. The accounting record shall identify the PFC revenue received from the collecting carriers, interest earned on such revenue, the amounts used on each project, and the amount reserved for currently approved projects.

(c) At least annually during the period the PFC is collected, held or used, each public agency shall provide for an audit of its PFC account. The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue. The accountant shall also express an opinion on whether the quarterly report required under § 158.63 fairly represents the net transactions within the PFC account. The audit may be—

(1) Performed specifically for the PFC account; or

(2) Conducted as part of an audit under the Single Agency Audit Act of 1983 (31 U.S.C. 7501–7) provided that the PFC is specifically addressed by the auditor.

(3) Upon request, a copy of the audit shall be provided to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit and to the Administrator.

§ 158.69 Recordkeeping and auditing: Collecting carriers.

(a) Collecting carriers shall establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, refunded and compensation retained under § 158.53(a) of this part. The accounting record shall identify the airport at which the passengers were enplaned.

(b) Each collecting carrier that collects more than 50,000 PFC's annually shall provide for an audit at least annually of its PFC account.

(1) The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenue. The opinion shall also address whether the quarterly reports required under § 158.65 fairly represent the net transactions in the PFC account.

(2) For the purposes of an audit under this section, collection is defined as the point when agents or other intermediaries remit PFC revenue to the carrier.

(3) Upon request, a copy of the audit shall be provided to each public agency for which a PFC is collected.

§ 158.71 Federal oversight.

(a) The Administrator may periodically audit and/or review the use of PFC revenue by a public agency. The purpose of the audit or review is to ensure that the public agency is in compliance with the requirements of this part and section 1113(e) of the Federal Aviation Act.

(b) The Administrator may periodically audit and/or review the collection and remittance by the collecting carriers of PFC revenue. The purpose of the audit or review is to ensure collecting carriers are in compliance with the requirements of this part and section 1113(e) of the Federal Aviation Act.

(c) Public agencies and carriers shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the U.S., access to any of its books, documents, papers, and records pertinent to PFC's

Subpart E—Termination

§ 158.81 General.

This subpart contains the procedures for termination of PFC's or loss of Federal airport grant funds for violations of this part or section 1113(e) of the Federal Aviation Act. This subpart does not address the circumstances under which authority to collect PFC's may be terminated for violations of the Airport Noise and Capacity Act of 1990.

§ 158.83 Informal resolution.

The Administrator shall undertake informal resolution with the public agency or any other affected party if, after review under § 158.71, the Administrator cannot determine that PFC revenue is being used for the approved projects in accordance with the terms of the Administrator's approval to impose a PFC for those projects or with section 1113(e) of the Federal Aviation Act.

§ 158.85 Termination of authority to impose PFC's.

(a) The FAA begins proceedings to terminate the public agency's authority to impose a PFC only if the Administrator determines that informal resolution is not successful.

(b) The Administrator publishes a notice of proposed termination in the **Federal Register** and supplies a copy to the public agency. This notice will state the scope of the proposed termination, the basis for the proposed action and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective actions the public agency can take to avoid further proceedings. The due date for comments and corrective action shall be no less than 60 days after publication of the notice.

(c) If corrective action has not been taken as prescribed by the Administrator, the FAA holds a public hearing, and notice is given to the public agency and published in the **Federal Register** at least 30 days prior to the hearing. The hearing will be in a form determined by the Administrator to be appropriate to the circumstances and to the matters in dispute.

(d) The Administrator publishes the final decision in the **Federal Register.** Where appropriate, the Administrator may prescribe corrective action, including any corrective action the public agency may yet take. A copy of

the notice is also provided to the public agency.

(e) Within 10 days of the date of publication of the notice of the Administrator's decision, the public agency shall—

(1) Advise the FAA in writing that it will complete any corrective action prescribed in the decision within 30 days; or

(2) Provide the FAA with a listing of the air carriers and foreign air carriers operating at the airport and all other issuing carriers that have remitted PFC revenue to the public agency in the preceding 12 months.

(f) When the Administrator's decision does not provide for corrective action or the public agency fails to complete such action, the FAA provides a copy of the Federal Register notice to each air carrier and foreign air carrier identified in paragraph (e) of this section. Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

§ 158.87 Loss of federal airport grant funds.

(a) If the Administrator determines that revenue derived from a PFC is excessive or is not being used as approved, the Administrator may reduce the amount of funds otherwise payable to the public agency under section 507 of the AAIA of 1982, 49 U.S.C. App. 2206. Such a reduction may be made as a corrective action under § 158.83 or § 158.85 of this part.

(b) The amount of the reduction under paragraph (a) of this section shall equal the excess collected, or the amount not used in accordance with this part.

(c) A reduction under paragraph (a) of this section shall not constitute a withholding of approval of a grant application or the payment of funds under an approved grant within the meaning of 49 U.S.C. App. 2218.

Subpart F—Reduction in Airport Improvement Program Apportionment

§ 158.91 General.

This subpart describes the required reduction in funds apportioned to a large or medium hub airport that imposes a PFC.

§ 158.93 Public agencies subject to reduction.

The funds apportioned under section 507(a)(1) of the Airport and Airway Improvement Act of 1982 to a public agency for a specific primary commercial service airport that it controls are reduced if—

(a) Such airport enplanes 0.25 percent or more of the total annual enplanements in the U.S., and

(b) The public agency imposes a PFC at such airport.

§ 158.95 Implementation of reduction.

(a) A reduction in apportioned funds will be applied beginning in the fiscal year immediately following the Administrator's approval of authority to impose a PFC and will be applied in each succeeding fiscal year in which the public agency imposes a PFC.

(b) The reduction in apportioned funds is calculated at the beginning of each fiscal year and shall be an amount equal to 50 percent of the PFC revenue forecast for the fiscal year, except that the maximum reduction in a fiscal year shall not exceed 50 percent of the funds that would otherwise be apportioned to the public agency based on passengers enplaning at the airport.

(c) If the projection of PFC revenue in a fiscal year is inaccurate, the reduction in apportioned funds may be increased or decreased in the following fiscal year, except that any further reduction shall not cause the total reduction to exceed 50 percent of such apportioned amount as would otherwise be apportioned in any fiscal year.

Appendix A—Assurances

A. *General.*

1. These assurances shall be complied with in the conduct of a project funded with passenger facility charge (PFC) revenue.

2. These assurances are required to be submitted as part of the application for approval of authority to impose a PFC under the provisions of the Aviation Safety and Capacity Expansion Act of 1990.

3. Upon approval by the Administrator of an application, the public agency is responsible for compliance with these assurances.

B. *Public agency certification.* The public agency hereby assures and certifies, with respect to this project that:

1. Responsibility and authority of the public agency. It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.

2. Compliance with regulation. It will comply with all provisions of 14 CFR part 158.

3. Compliance with state and local laws and regulations. It has complied, or will comply, with all applicable State and local laws and regulations.

4. Environmental, airspace and airport layout plan requirements. It will not use PFC revenue on a project until the FAA has notified the public agency that—

(a) Any actions required under the National Environmental Policy Act of 1969 have been completed;

(b) The appropriate airspace finding has been made; and

(c) The FAA Airport Layout Plan with respect to the project has been approved.

5. Nonexclusivity of contractual agreements. It will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

6. Carryover provisions. It will not enter into any lease or use agreement with any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge if such agreement for such facility contains a carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.

7. Competitive access. It agrees that any lease or use agreements between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge will contain a provision that permits the public agency to terminate the lease or use agreement if—

(a) The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and

(b) Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.

8. Rates, fees and charges.

(a) It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(b) It will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(c) Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.

9. Standards and specifications. It will carry out the project in accordance with FAA airport design, construction and equipment standards and specifications contained in advisory circulars current on the date of project approval.

10. Recordkeeping and Audit. It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of 14 CFR part 158 and will contain documentary evidence for all items of project costs.

11. Reports. It will submit reports in accordance with the requirements of 14 CFR part 158, subpart D, and as the Administrator may reasonably request.

12. Airport Noise and Capacity Act of 1990. It understands sections 9304 and 9307 of the Airport Noise and Capacity Act of 1990 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.

Issued in Washington, DC, on May 22, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–12576 Filed 5–23–91· 9:40 am]

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federal register

Wednesday
May 29, 1991

Part IV

Department of Housing and Urban Development

Office of the Secretary

NOFA for the Rental Voucher Program and Rental Certificate Program FY 1991; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3234; FR-3037-N-01]

NOFA for the Rental Voucher Program and Rental Certificate Program FY 1991

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for FY 1991 and procedures for allocating funds and approving PHA/IHA applications.

SUMMARY: This notice identifies the amount of housing assistance budget authority available for incremental rental vouchers and rental certificates for HUD-established allocation areas during Fiscal Year 1991. This notice also invites Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs), to submit applications for housing assistance funds and provides instructions to PHA/IHAs governing the submission of applications, and describes procedures for rating, ranking, and approving PHA/IHA applications. The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing.

DATES: Applications must be received in the HUD Field Office by 3 p.m. local time on July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2502–0123.

Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document. Information on the burden hours for these requirements is provided as follows: Form HUD–52515, number of responses, 1,000; hours per response, 4; total burden hours 4,000. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Purpose and Substantive Description

(A) Authority

The regulations governing the Rental Voucher Program and the Rental Certificate Program are published at 24 CFR part 887 and 24 CFR part 882. The regulations for allocation of housing assistance budget authority are published at 24 CFR part 791, subpart D (revised 56 FR 9822, March 7, 1991).

(B) Allocation Amounts

(1) Housing Needs Formula

Approximately $1.3 billion of budget authority available for incremental rental vouchers and rental certificates is being allocated to HUD Field Offices and allocation areas using the housing needs factors established in accordance with 24 CFR 791.402. In addition, approximately $344 million of budget authority available for incremental rental vouchers and rental certificates will be made available at a later date when notices are published in the **Federal Register** for the Family Self-Sufficiency program.

(2) Fiscal Year 1990 Awards

In Fiscal Year 1990, a large number of applications failed to receive funding because of a misunderstanding about new program requirements. The Department published a notice in the **Federal Register** on January 8, 1991 (56 FR 750) advising applicants that, if their applications had been rejected solely because of their failure to contain the necessary drug-free workplace and anti-lobbying certifications and disclosures, that these documents could be submitted by February 7, 1991. Corrected Fiscal Year 1990 applications that are approvable will be funded from Fiscal Year 1991 allocations for each allocation area before Fiscal Year 1991 applications are considered. In this same manner the Department will also make funding available for Fiscal Year 1990 applications that HUD erroneously returned as incomplete or late.

(3) Metropolitan—Nonmetropolitan Mix

Separate housing needs factors were developed for the metropolitan and nonmetropolitan portions of each Field Office jurisdiction. On a nationwide basis, approximately 23 percent of the Fiscal Year 1991 budget authority for Rental Voucher Program and Rental Certificate Program incremental units is designated for nonmetropolitan areas. The nonmetropolitan housing needs factors were applied to the housing assistance budget authority available for use in nonmetropolitan areas, and metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas.

(4) Allocation Areas

The allocation areas have been established to ensure sufficient competition among PHA/IHAs (including State and regional or multi-county PHA/IHAs) operating housing programs within the HUD-established allocation areas. With certain exceptions where it was not practicable, the formula allocation for each allocation area supports at least 50 units and each allocation area contains at least three PHA/IHAs with satisfactory administrative capability to ensure meaningful competition.

(5) Program Type

This notice announces the allocation of housing assistance budget authority for the Rental Voucher Program and for the Rental Certificate Program to each Field Office for designated allocation areas, based on the housing needs factors. The allocation of housing assistance budget authority to each allocation area, however, is a total for both programs. The allocations have been structured to give Field Offices flexibility in approving PHA/IHA applications for a specific program. It is not necessary that each allocation area within a Field Office be provided both rental vouchers and rental certificates. This notice also provides, for each allocation area, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the allocation area. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction and assume a 45 percent Rental Voucher Program mix and a 55 percent Rental Certificate Program mix. These percentages reflect

the nationwide funding available for each of these Programs. The actual number of units assisted will vary from these estimates because of differences in the actual bedroom size mix and the actual mix of rental vouchers and rental certificates that are funded in a given allocation area.

(C) Rental Rehabilitation Program Obligations

(1) For low income families living in units rehabilitated under the Rental Rehabilitation Program (24 CFR part 511), section 8(u) of the United States Housing Act of 1937 requires that:

(a) Rental vouchers or rental certificates shall be made available for families who are required to move out of their units because of physical rehabilitation activities or because of overcrowding;

(b) At the discretion of the PHA/IHA, rental vouchers or rental certificates may be made available for families who would have to pay more than 30 percent of adjusted income for rent after rehabilitation whether they choose to remain in or move from the project; and

(c) HUD shall allocate rental certificates or rental vouchers to ensure that sufficient resources are available to address the physical or economic displacement or potential economic displacement of tenants living in rental rehabilitation projects.

(2) The HUD-Independent Agencies Appropriations Act for Fiscal Year 1991 (Pub. L. 101–507, approved November 5, 1990) requires that highest priority for incremental rental vouchers shall be given to families who, as a result of rental rehabilitation actions, are involuntarily displaced or are or would be displaced as a consequence of increased rents (i.e., rent burden exceeds 35 percent of adjusted income).

(3) In determining the minimum number of rental vouchers or rental certificates to allocate to a PHA/IHA, Field Office staff must first determine the total number of rental vouchers and rental certificates needed during Fiscal Year 1991 for families affected by rental rehabilitation activities and the amount of such housing assistance available to the PHA/IHA without additional funding. In reviewing the amount of assistance available to a PHA/IHA for rental rehabilitation families, the Field Office staff must make certain that the PHA/IHA has enough rental certificates for low income families who are affected by rental rehabilitation activities, but who are not eligible for rental vouchers.

(4) The Field Office will determine the minimum amount of assistance to be provided to a PHA/IHA during Fiscal Year 1991 as follows:

(a)(i) Identify the rental rehabilitation projects to be completed by December 1991 and identify the number of eligible families living in the projects that will be physically displaced (i.e., forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit as a result of rental rehabilitation activities) or whose rent would be more than 30 percent of income as a result of rental rehabilitation activities.

(ii) Families whose incomes are between 50 percent and 80 percent of median income and whose rent after rehabilitation would be more than 30 percent of their adjusted income, but who are not physically displaced, are ineligible for rental vouchers. Because rental certificates must be made available to these low income families, the number of these families should be separately identified.

(b) From the number of eligible families affected by rental rehabilitation activities, subtract the number of rental vouchers and rental certificates under ACC for use within the allocation area, but not issued to families. Do not include any special allocations of rental vouchers and rental certificates which were provided by HUD to be used for special purposes such as opt-outs, public housing demolition or disposition, or desegregation of public housing projects or rental certificates approved by HUD for use in connection with project-based assistance.

(c) From the number of affected eligible families determined in paragraph (b), above, subtract the number of rental vouchers and rental certificates that are expected to turn over (i.e., those rental vouchers or rental certificates that are expected to be available for reissuance) in the allocation area during Fiscal Year 1991.

(d) The remainder, computed in accordance with the above, equals the minimum number of rental vouchers or rental certificates that must be made available to the PHA/IHA during Fiscal Year 1991.

(D) Eligibility

All PHA/IHAs are invited by this notice to submit applications for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

(E) Selection Criteria/Ranking Factors

(1) General

To provide each applicant a fair and equitable opportunity to receive Fiscal Year 1991 rental vouchers and rental certificates, Field Offices will use the objective selection criteria stated in this notice to rate, within each allocation area, all applications found acceptable for further processing. After the Field Office has determined, under section I.(B) above, the number of rental vouchers and rental certificates required to fund Fiscal Year 1990 corrected applications and, under section I.(C) above, the number of rental vouchers and rental certificates required for families affected by rental rehabilitation activities, if any incremental housing assistance budget authority remains available within an allocation area, the Field Office will rate and rank all Fiscal Year 1991 applications with respect to assistance sought for other purposes. The Office of Indian Programs will rate applications received from IHAs. The Field Office will use selection criteria 1 through 4 in section I.(E)(3) below to rate and rank these applications.

(2) Applications for Families Living in Rental Rehabilitation Projects

The Field Office will identify the number of units in each application needed for—

(a) Families that will be physically displaced from units to be rehabilitated under the Rental Rehabilitation Program (24 CFR part 511); and

(b) Families who would have to pay more than 30 percent of adjusted income for rent as a result of rental rehabilitation activities.

The Field Office will compare the PHA/IHA estimate and the Field Office estimate developed in accordance with the procedures identified in section I.(C)(3). The Field Office estimate shall be used unless it is clear that the Field Office estimates are incorrect.

(3) Applications for Families Other Than Families Living in Rental Rehabilitation Projects

(a) *Selection Criterion 1: PHA/IHA Administrative Capability (32 points)*—(i) *Description:* Overall PHA/IHA administrative ability as evidenced by factors such as leasing rates and correct administration of housing quality standards, tenant rent computation, and rent reasonableness requirements in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs. If a PHA/IHA is not administering either a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office will rate PHA/IHA administration of the Public or Indian Housing Program. A PHA/IHA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the

administration of its Public or Indian Housing Program.

(ii) *Rating: 16–32 points.* Field Office rates overall PHA/IHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public housing) as excellent; there are no serious outstanding management review or Inspector General audit findings; and the leasing rate (or occupancy rate for public housing) for rental vouchers and rental certificates under ACC for one year was at least 95 percent as of September 30, 1990;

1–15 points. Field Office rates overall PHA/IHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public housing) as good; any management review or Inspector General audit findings are being satisfactorily addressed; and the leasing rate (or occupancy rate for public housing) for rental vouchers and rental certificates under ACC for one year was at least 85 percent as of September 30, 1990;

0 points. If none of the above statements apply, assign 0 points.

(b) *Selection Criterion 2: Underfunding of Housing Needs (25 points)*—(i) *Description:* The degree to which the housing needs of the area specified in the PHA/IHA's application from which the PHA/IHA draws families to assist (primary area) have previously been underfunded relative to the needs of other localities within the allocation area, taking into account such factors as the number of assisted housing units and the number of very low income renter households eligible for such assistance. The Field Office will, wherever practicable, consider needs being met by all federally assisted rental housing programs, including the FmHA Section 515 Rural Rental Program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

(ii) *Rating: Underfunded Assisted Housing (25 points).* The Field Office will evaluate whether housing needs in the primary area specified in the application have been underfunded with respect to assisted housing provided to other communities in the allocation area.

25 points. Housing needs in the area(s) specified in the application have been severely underfunded.

12 points. Housing needs in the area(s) specified in the application have been moderately underfunded.

0 points. Housing needs in the area(s) specified in the application have received a proportionate share of funding or have been overfunded.

(c) *Selection Criterion 3: Replacement Housing (10 points)*—(i) *Description:* The percentage of the units in the application which the PHA/IHA will count to satisfy the replacement housing requirements under section 5(h) of the United States Housing Act of 1937.

(ii) *Rating: 10 points.* 50–100% of the units being applied for will be used for replacement housing.

7 points. 25–49% of the units being applied for will be used for replacement housing.

4 points. 1–24% of the units being applied for will be used for replacement housing.

0 points. None of the units being applied for will be used for replacement housing.

(d) *Selection Criterion 4: Homeless Program (20 points)*—(i) *Description:* The percentage of the units in the application which will be targeted to homeless families.

(ii) *Rating: 20 points.* 75–100% of the units being applied for will be used for the homeless.

15 points. 50–74% of the units being applied for will be used for the homeless.

10 points. 1–49% of the units being applied for will be used for the homeless.

0 points. None of the units being applied for will be used for the homeless.

(iii) *Field Office Assessment:* The Field Office shall evaluate the capacity of the PHA/IHA to have a homeless program operational within six months of ACC execution. If the Field Office determines that the PHA/IHA does not have the capacity to coordinate the provision of supportive services and to implement a homeless program of the size indicated in the PHA/IHA application, up to one-half of the points assigned to the PHA/IHA under this criterion may be deducted.

(e) *Selection Criterion 5: Local Initiatives (3 points)*—(i) *Description.* (*1*) Extent to which PHA/IHAs provide families with greater housing opportunities (e.g., State or regional PHA/IHAs, or local PHA/IHAs participating in voluntary exchange programs and interjurisdictional mobility programs). (*2*) Extent to which PHA/IHAs demonstrate locally initiated efforts in support of their rental voucher and rental certificate programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(ii) *Rating: 3 points:* PHA/IHA is a State or regional PHA/IHA or local PHA/IHA participating in voluntary mobility programs *and* the State or locality provides local support (i.e., financial, manpower for inspection services) to its rental voucher or rental certificate program.

2 points: PHA/IHA provides broader housing choice *or* the State or locality provides support to the PHA/IHA's rental voucher or rental certificate program.

0 points: PHA/IHA *does not* provide broader housing choice and the State or locality does not provide support to the PHA/IHA's rental voucher or rental certificate program.

(F) Unacceptable Applications

(1) After the 14 calendar day technical deficiency correction period, the Field Office will disapprove PHA/IHA applications that it determines are not acceptable for processing (refer to section III, Checklist of Application Submission Requirements and section IV, Corrections to Deficient Applications). The Field Office notification of rejection letter must state the basis for the Field Office decision.

(2) Applications that fall into any of the following categories will not be processed.

(a)(i) The Department of Justice has brought a civil rights suit against the applicant PHA/IHA, and the suit is pending;

(ii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iii) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1).

(b) the PHA/IHA has serious unaddressed, outstanding Inspector General audit findings or Field Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of a PHA/IHA

that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(c) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent, or, in the case of a PHA/IHA not currently administering a Rental Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 75 percent; or

(d) The PHA/IHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA/IHA to administer an additional increment of rental vouchers or rental certificates.

(G) Local Government Comments

The Field Office will obtain section 213 comments from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

(H) Funding Applications

Within each allocation area, the Field Office must approve applications in accordance with HUD requirements in amounts needed for families affected by Rental Rehabilitation activities under section I.(C) above. The Field Office must approve any corrected Fiscal Year 1991 applications deemed approvable in accordance with the procedures identified in the January 8, 1991, **Federal Register** notice (56 FR 750). The Field Office must approve applications for any remaining assistance based on the ranking of the applications.

The Field Office must approve applications in rank order until all the housing assistance budget authority is used. Funding may be either 100 percent or some lower percentage of the units in each application, up to the maximum number of units allowed. Within each allocation area, the Field Office must apply the same percentage to each application that is funded. For example, if the Field Office reduces the number of units requested in one application by 10 percent, then the number of units in all applications in that allocation area must also be reduced by that same percentage. If an application contains more than the maximum number of units allowed under this Notice (10 percent of units under ACC or 50 units, whichever is greater), the Field Office must apply the funding percentage to the maximum units allowed and not to the number of units listed in the application.

In those instances where a Field Office funds applications according to rank order at 100 percent of the requested amount in a given allocation area, only to find it has some number of units left but not enough to fund the next fundable application in its entirety, that application can be funded to the extent of the number of units available without requiring an across the board adjustment.

If a PHA/IHA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the allocation area, the Field Office will award the available form of assistance, though not specifically requested by the applicant.

(I) Reallocations of Funds

The Field Office shall make every reasonable effort to use the funds made available for each allocation area within that area. It may be necessary, however, to reallocate funds from one allocation area to another allocation area when the funds are not likely to be used in the allocation area to which they were initially assigned during Fiscal Year 1991. If an allocation area has no fundable applications or has an insufficient number of fundable applications to utilize allocated resources, the following procedures shall be followed:

(a) Reallocations Within the Same State

If the Field Office determines that not all of the funds allocated for a particular allocation area are likely to be used during Fiscal Year 1991, the Field Office must reallocate the remaining funds to other allocation areas within the same State where they are likely to be used during Fiscal Year 1991. Similarly, if the Regional Office determines that an allocation of funds to a Field Office is not likely to be used within that State and Field Office jurisdiction during Fiscal Year 1991, the Regional Office must reallocate those funds to another Field Office where they are likely to be used during Fiscal Year 1991, for use in the same State. In making these reallocations priority must be given to those allocation areas where additional funds are needed for families affected by Rental Rehabilitation Program activities.

(b) Reallocations Between States

If a Regional Office cannot use funds from an allocation area within the same State, the Regional Office may request Headquarters approval to reallocate funds to another State within the jurisdiction of the Regional Office. In approving such a reallocation, Headquarters must consider whether these funds are needed within the same Region or other Regions for families affected by Rental Rehabilitation Program activities.

A request for Headquarters approval of a reallocation between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, the metropolitan/nonmetropolitan mix, and the amount to be reallocated subsequently to each State. Such requests must be submitted to Headquarters (Attention: Funding Control Division, HOBF) for approval.

(c) Reallocations Between Metropolitan and Nonmetropolitan Areas

The Regional Office must follow the original fund assignments to metropolitan and nonmetropolitan areas when it reallocates unused budget authority. If there are no approvable applications for the designated area, the Regional Office may switch the budget authority between a metropolitan and a nonmetropolitan area within the same State provided that an offsetting switch can be made in another State within the same Region. If an offsetting switch cannot be made and the metropolitan or nonmetropolitan amounts require changes to the regional fund assignments, the Regional Office must obtain the approvel of the Funding Control Division before switching budget authority between a metropolitan and a nonmetropolitan area.

(J) Notification of Funds Awarded

After the Field Offices have reviewed, rated, ranked, and approved the applications, Regional Offices must submit to Headquarters a list of all approved applications for the Federal Fiscal Year quarters ending December, March, June, and September, listed by Field Office. The Regional Office application approval list for each calendar quarter is due in Headquarters (Attention: Funding Control Division, HOBF) on the tenth working day of April, July, October, and January (i.e., the months following the end of each calendar quarter).

The Regional Offices must provide the following information for each application approved:

(a) The name and address of the PHA/IHA;

(b) The project number, the number of rental vouchers and the number of rental certificates, as applicable, approved for the PHA/IHA;

(c) The amount of contract authority and budget authority stated separately

for rental vouchers and rental certificates;

(d) The number of rental vouchers and the number of rental certificates for each of the following: rental rehabilitation, FY 1990-corrected applications, the homeless, and other purposes.

On March 14, 1991, the Department published in the Federal Register a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under the programs available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the Federal Register.

—Publish a notice in the Federal Register at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

(K) Administrative Fees

The administrative fees for units in Fiscal Year 1991 appropriation are specified as follows:

(a) FY 1991 Incremental (Fees Specified by FY 1991 Appropriation)

	Rental vouchers	Rental certificates
(1) On-going	8.2	8.2
(2) Preliminary	$275	$275
(3) Hard-to-house	$45	$45

(b) FY 1991 Opt-outs/Public Housing Demolition (Replacements and Relocation)

	Rental vouchers	Rental certificates
(1) On-going	6.5	7.65
(2) Preliminary	$215	$250
(3) Hard-to-house	$45	$45

(c) Renewal of Rental Vouchers and Rental Certificates

	Rental vouchers	Rental certificates
(1) On-going	6.5	7.65
(2) Preliminary	$0	$0
(3) Hard-to-house	$45	$45

For budget preparation, submission of requisitions and approving year-end operating statements, PHA/IHAs should use the August 3, 1990 Housing Notice (H–90–53), Administrative Fee Requirements for the Housing Voucher and Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given PHA/IHA.

(L) Headquarters Reserve

The Department is retaining approximately $85 million of the budget authority available for incremental rental vouchers and rental certificates in a Headquarters Reserve for use in connection with natural disasters, litigation, desegregation, and other housing emergencies.

(M) Other Allocations

In addition to the budget authority for incremental rental vouchers and rental certificates, the Department has $5.8 billion of budget authority, including carryover budget authority, for rental vouchers and rental certificates available for allocation on an as-needed basis for the following purposes:

(1) Opt-Outs

Assisting families that are adversely affected by an owner's decision to opt-out as follows:

(a) Families living in a Section 8 Loan Management Set-Aside Project where the Section 8 Housing Assistance Payments Contract ends.

(b) Families living in a Section 8 New Construction or Substantial Rehabilitation Project where the owner has sole discretion to "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Contract and does so.

Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should indicate whether rental vouchers, rental certificates, or both are needed and should include all necessary data required to determine the amount of funds required.

(2) Public Housing Demolition and Disposition (Relocation and Replacement)

Assisting families that are living in public housing projects that are being demolished or disposed of with HUD approval. Relocation assistance may be provided in the form of funding for 5-year rental vouchers. Replacement housing may be provided in the form of funding for 15-year rental certificate assistance. The Assistant Secretary for Public and Indian Housing, before approving a PHA/IHA demolition or disposition proposal, will request from the Assistant Secretary for Housing the number of rental certificates required for replacement assistance and the number of rental vouchers required for relocation assistance.

(3) Renewals

Headquarters will allocate funds directly to the Field Offices to provide for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1991. Renewal funding will be provided in-kind (i.e., rental voucher funding for rental vouchers and rental certificate funding for rental certificates).

(4) Section 23 Conversions

Headquarters will allocate rental certificate funds directly to the Field Offices to provide assistance to residents of section 23 leased housing for which leases are expiring or have been terminated by owners. Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should include all necessary data required to determine the amount of funds required.

(5) Section 8 Amendments

Rental Certificate Program cost amendments provide budget authority increases to PHA/IHA rental certificate programs to support increases in housing assistance payments to maintain the PHA/IHA's program at the number of units originally approved by HUD. Funds are allocated on a needs basis based on actual housing costs and tenant contributions.

II. Application Process

(A) Form HUD–52515 may be obtained from the local HUD Field Office. To assist PHA/IHAs, the following are attached to this notice: Form HUD 52515 (Attachment 1); Certification for a Drug-Free Workplace (Attachment 2); Text for the certification regarding Lobbying (Attachment 3); and Standard Form LLL, Disclosure of Lobbying Activities (Attachment 4).

(B) PHA/IHA applications must be received in the HUD Field Office by 3 p.m. local time on July 29, 1991. An IHA must submit, at the same time, a copy of its application to appropriate HUD Office of Indian Programs. Field Offices will notify PHA/IHAs of the exact address and room number where applications must be received.

III. Application Submission Requirements

(A) General

PHA/IHA applications must be submitted to the local Field Office and Office of Indian Programs, if appropriate, on Form HUD–52515 in accordance with the applicable program regulations.

The PHA/IHA application must identify the number of rental vouchers and rental certificates requested for families living in rental rehabilitation projects, the homeless, or other uses and should include an explanation of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection, however, the Field Office can only rate and rank the application based on information it has on-hand.

The exhibit published at the end of this notice lists the allocation areas and the number of units and budget authority available for each allocation area. PHA/IHAs should limit their applications to a reasonable number of rental vouchers and rental certificates based on the capacity of the PHA/IHA to lease all the units within 12 months of ACC execution. The number of units on the PHA/IHA application may not exceed the greater of: (a) Ten (10) percent of the total rental vouchers and rental certificates under ACC for the PHA/IHA; or (b) 50 units. An application may exceed this limit only if the PHA/IHA cannot, within this limit, meet the needs of families affected by rental rehabilitation activities.

An application (Form HUD–52515) may request units in only one allocation area. If a PHA/IHA seeks units in more than one allocation area, it must submit a separate application (Form HUD–52515) for each allocation area in which the PHA/IHA requests units. If both rental vouchers and rental certificates are requested on the same application, then the application will be given two project numbers, one for the rental voucher program and one for the rental certificate program.

In determining ten percent (10%) of the total rental vouchers and rental certificates available to a PHA/IHA, the Field Office will count the number of rental certificates under ACC, plus the number of rental vouchers reserved (since the ACC does not specify units) and then take ten percent (10%) of the total. The Field Office will reduce the number of units requested in any application that exceeds this limit to the greater of, ten percent (10%) of the total number of rental vouchers and rental certificates (under reservation for rental vouchers or under ACC for rental certificates) or 50 units.

When a PHA/IHA submits more than one application, the Field Office will compute the reduction in units as follows: by allocation area, reduce the number of units requested to ten percent (10%) of the units the PHA/IHA has under ACC (under reservation for rental vouchers) for that allocation area or 50 units, whichever is greater. If the PHA/IHA requested a number less than the ten percent (10%) or 50 units for a specific allocation area, use the number requested for that area.

(B) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each PHA/IHA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See attached Certificate for Drug-Free Workplace, Attachment 2.)

(C) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA/IHA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist PHA/IHAs, the text for the certification regarding Lobbying (Attachment 3) and Standard Form LLL, "Disclosure Form to Report Lobbying" (Attachment 4) are attached.

(D) Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the PHA/IHA's application. It is recommended but not required that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST—APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES

PHA/IHA		Field office		
Yes	No	Yes	No	
___	___	___	___	The application contains a completed Form HUD 52515.
___	___	___	___	The application specifies the number of rental vouchers and/or rental certificates requested for families living in rental rehabilitation projects, the homeless, or other uses.
___	___	___	___	The application states by number of bedrooms the total number of units requested by the PHA/IHA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled families.
___	___	___	___	The application demonstrates that the project requested is consistent with the applicable Housing Assistance Plan, including the goals for meeting the housing needs of low income families, or in the absence of such a plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
___	___	___	___	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office they do not have to be resubmitted.

INITIAL SCREENING CHECKLIST—APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES—Continued

PHA/IHA		Field office		
Yes	No	Yes	No	
___	___	___	___	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.
___	___	___	___	The application contains the PHA/IHA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, a PHA/IHA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
___	___	___	___	The application contains estimates of the average adjusted income for prospective participants for each bedroom size.
				Requirement for Drug-Free Workplace Certification and Anti-Lobbying Certification and Disclosure Statement
___	___	___	___	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (Attachment 2)).
___	___	___	___	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the PHA/IHA obtaining more than $100,000 in budget authority. To comply, PHA/IHAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 4).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the Field Office no later than the date and time specified in this notice. The Field Office will initially screen all applications and notify PHA/IHAs of technical deficiencies by letter.

The following is a list of items that may be requested from a PHA/IHA during the technical correction period. This list is intended to be a complete list and only these items may be requested after the application submission deadline date.

- Signature on the Form HUD–52515.
- Number of units required to meet rental rehabilitation program needs.
- Section 213 comments from local government.
- Proposed leasing schedule.
- Average adjusted income for prospective participants for each bedroom size.
- Drug-Free Workplace Certification
- Anti-Lobbying Certification and, if warranted, Disclosure Statement of Lobbying Activities.

All PHA/IHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time of the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All PHA/IHAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. A PHA/IHA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification disclosure requirements after the 14-day technical deficiency correction period will be rejected from processing (see section III).

V. Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Rental Voucher Program and the Rental Certificate Program are part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this notice does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule would not substantially alter the established roles of HUD, the States and local governments, including PHA/IHAs.

HUD has determined that this notice is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because it is a funding notice and does not alter program requirements concerning family eligibility.

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f).

Dated: May 15, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210-27-M

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Application for Existing Housing

Section 8 Housing Assistance Payments Program

Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Attachment 1

OMB Approval No. 2502-0123 (exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0123), Washington, D.C. 20503.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:	Application/Project No. (HUD use only)
Mailing Address of the PHA	Requested housing assistance payments are for : How many Certificates? / How many Vouchers?
Signature of PHA Officer authorized to sign this application X	Have you submitted prior applications: No Yes . . . for Section 8 Certificates? ☐ ☐ . . . for Section 8 Housing Vouchers? ☐ ☐
Title of PHA Officer authorized to sign this application / Phone Number	Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count									Total Dwelling Units
	Elderly, Handicapped, Disabled			Non-Elderly						
	Efficiency	1-BR	2-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies. Certification Regarding Drug-Free Workplace Requirements.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Attachment 3—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-27-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

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Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES 40

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

HUD REGION I (BOSTON) DOLLARS UNITS-COMPONENT PARTS OF ALLOCATION AREA PAGE 01

BOSTON, MASSACHUSETTS OFFICE
METROPOLITAN ALLOCATION AREAS
Western Massachusetts

	5 193 200	115	BERKSHIRE county towns of: Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge HAMPDEN county towns of: Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham, HAMPSHIRE county towns of: Belchertown, Easthampton, Granby, Huntington, Northampton Southampton, South Hadley
Worcester County	4,173,507	92	MIDDLESEX county towns of: Ashby, WORCESTER courty towns of: Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster WORCESTER county towns of: Auburn, Barre, Boylston, Brookfield Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton Holden, Leicester, Millbury, Northborough, Northbridge North Brookfield, Oxford, Paxton, Princeton, Rutland Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster Westborough, West Boylston, Worcester
Boston	27,092,924	597	BRISTOL county towns of: Mansfield, Norton, Raynham, ESSEX county towns of: Lynn, Lynnfield, Nahant, Saugus, MIDDLESEX county towns of: Acton, Arlington, Ashland, Ayer, Bedford Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord Everett, Framingham, Groton, Holliston, Hopkinton, Hudson Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard Medford, Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn, NORFOLK county towns of: Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham Dover, Foxborough, Franklin, Holbrook, Medfield, Medway Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth Wrentham, PLYMOUTH county towns of: Carver, Duxbury, Hanover Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rockland Scituate, SUFFOLK county towns of: Boston, Chelsea, Revere Winthrop, WORCESTER county towns of: Berlin, Bolton, Harvard
Northeast	5,600,384	123	Hopedale, Lancaster, Mendon, Milford, Southborough, Upton ESSEX county towns of: Amesbury, Andover, Boxford, Georgetown Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury Newburyport, North Andover, Salisbury, West Newbury, MIDDLESEX county towns of: Billerica, Chelmsford, Dracut, Dunstable Lowell, Pepperell, Tewksbury, Tyngsborough, Westford, ESSEX county towns of: Beverly, Danvers, Essex, Gloucester, Hamilton Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport Rowley, Salem, Swampscott, Topsfield, Wenham
Southeast	5,013,539	111	BRISTOL county towns of: Easton, NORFOLK county towns of: Avon PLYMOUTH county towns of: Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman, BRISTOL county towns of: Fall River, Somerset, Swansea, Westport BRISTOL county towns of: Acushnet, Dartmouth, Fairhaven

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Freetown, New Bedford, PLYMOUTH county towns of: Marion Mattapoisett, Rochester, BRISTOL county towns of: Attleboro North Attleborough, Rehoboth, Seekonk, NORFOLK county towns of: Plainville, WORCESTER county towns of: Blackstone Millville
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Statewide	5,660,380	152	BARNSTABLE, BERKSHIRE county towns of: Adams, Alford, Becket Clarksburg, Egremont, Florida, Great Barrington, Hancock Monterey, Mount Washington, New Ashford, New Marlborough North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield Tyringham, Washington, West Stockbridge, Williamstown, Windsor BRISTOL county towns of: Berkley, Dighton, Taunton, DUKES FRANKLIN, HAMPDEN county towns of: Blandford, Brimfield Chester, Granville, Holland, Tolland, Wales, HAMPSHIRE county towns of: Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton Williamsburg, Worthington, NANTUCKET, PLYMOUTH county towns of: Wareham, WORCESTER county towns of: Athol, Gardner Hardwick, Hubbardston, New Braintree, Oakham, Petersham Phillipston, Royalston, Southbridge, Sturbridge, Templeton Warren, West Brookfield, Winchendon
HARTFORD, CONNECTICUT OFFICE METROPOLITAN ALLOCATION AREAS			
Brideport-Milford, Norwalk, Stamford	4,700,738	118	FAIRFIELD county towns of: Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull, NEW HAVEN county towns of: Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour FAIRFIELD county towns of: Norwalk, Weston, Westport, Wilton FAIRFIELD county towns of: Darien, Greenwich, New Canaan Stamford
Bristol, Danbury, New Britain, Waterbury	3,354,587	85	HARTFORD county towns of: Bristol, Burlington, LITCHFIELD county towns of: Plymouth, FAIRFIELD county towns of: Bethel Brookfield, Danbury, New Fairfield, Newtown, Redding Ridgefield, Sherman, LITCHFIELD county towns of: Bridgewater New Milford, HARTFORD county towns of: Berlin, New Britain Plainville, Southington, LITCHFIELD county towns of: Bethlehem Thomaston, Watertown, WOODbury, NEW HAVEN county towns of: Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott
Hartford	4,786,129	120	HARTFORD county towns of: Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield, Farmington Glastonbury, Granby, Hartford, Manchester, Marlborough Newington, Rocky Hill, Simsbury, South Windsor, Suffield West Hartford, Wethersfield, Windsor, Windsor Locks LITCHFIELD county towns of: Barkhamsted, New Hartford MIDDLESEX county towns of: East Haddam, NEW LONDON county towns of: Colchester, TOLLAND county towns of: Andover, Bolton Columbia, Coventry, Ellington, Hebron, Somers, Stafford Tolland, Vernon, Willington
Middletown, N.London, Norwich, N. Haven-Merid	5,325,767	133	MIDDLESEX county towns of: Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland, NEW LONDON county towns of: Bozrah, East Lyme, Franklin, Griswold, Groton Ledyard, Lisbon, Montville, New London, North Stonington Norwich, Old Lyme, Preston, Salem, Sprague, Stonington

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Waterford, WINDHAM county towns of: Canterbury, MIDDLESEX county towns of: Clinton, Killingworth, NEW HAVEN county towns of: Bethany, Branford, Cheshire, East Haven, Guilford, Hamden Madison, Meriden, New Haven, North Branford, North Haven Orange, Wallingford, West Haven, Woodbridge
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Connecticut Statewide	2,650,338	73	HARTFORD county towns of: Hartland, LITCHFIELD county towns of: Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury Sharon, Torrington, Warren, Washington, Winchester, MIDDLESEX county towns of: Chester, Deep River, Essex, Old Saybrook Westbrook, NEW LONDON county towns of: Lebanon, Lyme Voluntown, TOLLAND county towns of: Mansfield, Union, WINDHAM county towns of: Ashford, Brooklyn, Chaplin, Eastford, Hampton Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock
MANCHESTER, NEW HAMPSHIRE OFFICE METROPOLITAN ALLOCATION AREAS			
Vermont - Burlington	873,857	23	CHITTENDEN county towns of: Burlington, Charlotte, Colchester Essex, Hinesburg, Jericho, Milton, Richmond, St George Shelburne, South Burlington, Williston, Winooski, FRANKLIN county towns of: Georgia, GRAND ISLE county towns of: Grande Isle, South Hero
Metropolitan New Hampshire	2,949,905	79	ROCKINGHAM county towns of: Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow Salem, Sandown, Seabrook, Windham, HILLSBOROUGH county towns of: Bedford, Goffstown, Manchester, MERRIMACK county towns of: Allenstown, Hooksett, ROCKINGHAM county towns of: Auburn Candia, HILLSBOROUGH county towns of: Pelham, HILLSBOROUGH county towns of: Amherst, Brookline, Hollis, Hudson Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton ROCKINGHAM county towns of: Londonderry, ROCKINGHAM county towns of: Exeter, Greenland, Hampton, New Castle, Newfields Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham STRAFFORD county towns of: Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth
Metropolitan Maine	2,658,536	71	PENOBSCOT county towns of: Bangor, Brewer, Eddington, Glenburn Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono Orrington, Penobscot Indian I, Veazie, WALDO county towns of: Winterport, ANDROSCOGGIN county towns of: Auburn, Greene Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus, CUMBERLAND county towns of: Cape Elizabeth, Cumberland, Falmouth Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond Scarborough, South Portland, Standish, Westbrook, Windham Yarmouth, YORK county towns of: Buxton, Hollis Old Orchard Beach, YORK county towns of: Berwick, Eliot Kittery, North Berwick, South Berwick, Wells, York
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Vermont Statewide	3,333,887	107	ADDISON, BENNINGTON, CALEDONIA, CHITTENDEN county towns of: Bolton, Buels, Huntington, Underhill, Westford, ESSEX FRANKLIN county towns of: Bakersfield, Berkshire, Enosburg

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Nonmetropolitan New Hampshire Statewide	3,391,390	108	Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery Richford, St. Albans, St. Albans, Sheldon, Swanton, GRAND ISLE county towns of: Alburg, Isle La Motte, North Hero, LAMOILLE ORANGE, ORLEANS, RUTLAND, WASHINGTON, WINDHAM, WINDSOR BELKNAP, CARROLL, CHESHIRE, COOS, GRAFTON, HILLSBOROUGH county towns of: Antrim, Bennington, Deering, Francestown, Greenfield Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare Windsor, MERRIMACK county towns of: Andover, Boscawen, Bow Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury New London, Northfield, Pembroke, Pittsfield, Salisbury Sutton, Warner, Webster, Wilmot, ROCKINGHAM county towns of: Chester, Deerfield, Epping, Fremont, Hampton Falls, Kensington Northwood, Nottingham, Raymond, South Hampton, STRAFFORD county towns of: Middleton, New Durham, Strafford, SULLIVAN
Nonmetropolitan Maine Statewide	5,153,900	166	ANDROSCOGGIN county towns of: Durham, Leeds, Livermore Livermore Falls, Minot, Turner, Wales, AROOSTOOK, CUMBERLAND county towns of: Baldwin, Bridgton, Brunswick, Casco Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago FRANKLIN, HANCOCK, KENNEBEC, KNOX, LINCOLN, OXFORD, PENOBSCOT county towns of: Alton, Argyle, Bradford, Bradley, Burlington Carmel, Carroll, Charleston, Chester, Clifton, Corinna Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway Milford, Millinocket, Mount Chase, Newburgh, Newport North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly Webster, Whitney, Winn, Woodville, PISCATAQUIS, SAGADAHOC SOMERSET, WALDO county towns of: Belfast, Belmont, Brooks Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty Lincolnville, Monroe, Montville, Morrill, Northport, Palermo Prospect, Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo, WASHINGTON, YORK county towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro
PROVIDENCE, RHODE ISLAND OFFICE METROPOLITAN ALLOCATION AREAS			
Statewide Metropolitan Allocation Area	5,702,187	163	NEWPORT county towns of: Little Compton, Tiverton, WASHINGTON county towns of: Hopkinton, Westerly, PROVIDENCE county towns of: Burrillville, Central Falls, Cumberland, Lincoln North Smithfield, Pawtucket, Smithfield, Woonsocket, BRISTOL county towns of: Barrington, Bristol, Warren, KENT county towns of: Coventry, East Greenwich, Warwick, West Warwick NEWPORT county towns of: Jamestown, PROVIDENCE county towns of: Cranston, East Providence, Foster, Glocester, Johnston North Providence, Providence, Scituate, WASHINGTON county towns of: Exeter, Narragansett, North Kingstown, Richmond South Kingstown

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
Statewide Nonmetropolitan Allocation Area	842,370	21	KENT county towns of: West Greenwich, NEWPORT county towns of: Middletown, Newport, Portsmouth, WASHINGTON county towns of: Charlestown, New Shoreham
HUD REGION II (NEW YORK)			
BUFFALO, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALBANY-SCHENECTADY-TROY/GLENS FALLS, NY	3,772,201	134	ALBANY, GREENE, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY WARREN, WASHINGTON
BUFFALO-NIAGARA FALLS/JAMESTOWN-DUNKIRK, NY	5,885,159	210	ERIE, NIAGARA, CHAUTAUQUA
SYRACUSE/UTICA-ROME/BINGHAMTON/ELMIRA, NY	5,323,369	189	MADISON, ONONDAGA, OSWEGO, HERKIMER, ONEIDA, BROOME, TIOGA CHEMUNG
ROCHESTER, NY	5,116,786	183	LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST NEW YORK	3,233,967	122	CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, JEFFERSON, LEWIS ST LAWRENCE
SOUTHEAST NEW YORK	4,222,184	159	TOMPKINS, CAYUGA, CORTLAND, COLUMBIA, CHENANGO, DELAWARE OTSEGO, SCHOHARIE
SOUTHWEST NEW YORK	2,237,579	84	ALLEGANY, CATTARAUGUS, GENESEE, SCHUYLER, SENECA, STEUBEN WYOMING, YATES
NEW YORK, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
Nassau Count,	4,335,992	115	NASSAU
Suffolk County	3,618,345	96	SUFFOLK
New York Pmsa	145,023,080	3837	NEW YORK, PUTNAM, ROCKLAND, WESTCHESTER
Dutchess & Orange Counties	2,722,471	72	ORANGE, DUTCHESS
NONMETROPOLITAN ALLOCATION AREAS			
Sullivan & Ulster Counties	1,835,174	57	SULLIVAN, ULSTER
NEWARK, NEW JERSEY OFFICE			
METROPOLITAN ALLOCATION AREAS			
BERGEN-PASSAIC NJ	9,723,204	237	BERGEN, PASSAIC
JERSEY CITY NJ	9,141,467	223	HUDSON
NEWARK NJ	17,047,414	417	ESSEX, MORRIS, SUSSEX, UNION, WARREN
SOUTH CENTRAL NEW JERSEY	16,686,389	407	ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER HUNTERDON, MERCER, MIDDLESEX, MONMOUTH, OCEAN, SALEM, SOMERSET
HUD REGION III (PHILADELPHIA)			
BALTIMORE, MARYLAND OFFICE			
METROPOLITAN ALLOCATION AREAS			
MARYLAND METROPOLITAN	14,483,150	451	ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD QUEEN ANNE'S, BALTIMORE, ALLEGANY, WASHINGTON, CALVERT CHARLES, FREDERICK, CECIL
NONMETROPOLITAN ALLOCATION AREAS			
MARYLAND NON METROPOLITAN	2,137,032	76	CAROLINE, DORCHESTER, GARRETT, KENT, ST MARY'S, SOMERSET TALBOT, WICOMICO, WORCESTER
CHARLESTON, WEST VIRGINIA OFFICE			
METROPOLITAN ALLOCATION AREAS			

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
ALL METRO COUNTIES	2,330,289	88	KANAWHA, PUTNAM, MINERAL, CABELL, WAYNE, WOOD, BROOKE, HANCOCK MARSHALL, OHIO
NONMETROPOLITAN ALLOCATION AREAS			
ALL NONMETRO COUNTIES	6,365,177	288	BARBOUR, BERKELEY, BOONE, BRAXTON, CALHOUN, CLAY, DODDRIDGE FAYETTE, GILMER, GRANT, GREENBRIER, HAMPSHIRE, HARDY, HARRISON JACKSON, JEFFERSON, LEWIS, LINCOLN, LOGAN, MCDOWELL, MARION MASON, MERCER, MINGO, MONONGALIA, MONROE, MORGAN, NICHOLAS PENDLETON, PLEASANTS, POCAHONTAS, PRESTON, RALEIGH, RANDOLPH RITCHIE, ROANE, SUMMERS, TAYLOR, TUCKER, TYLER, UPSHUR WEBSTER, WETZEL, WIRT, WYOMING
PHILADELPHIA, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALLENTOWN/BETHLEHEM	2,510,400	79	CARBON, LEHIGH, NORTHAMPTON
HARRISBURG/LEBANON/CARLISLE	2,559,362	81	CUMBERLAND, DAUPHIN, LEBANON, PERRY
LANCASTER/READING/YORK	4,662,080	148	LANCASTER, BERKS, ADAMS, YORK
PHILADELPHIA, WILMINGTON	18,650,242	589	BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, NEW CASTLE
SCRANTON/WILKES-BARRE/STATE COL./WILLIAMSPORT	3,881,176	122	COLUMBIA, LACKAWANNA, LUZERNE, MONROE, WYOMING, CENTRE LYCOMING
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN DELAWARE/PENNSYLVANIA	5,186,033	195	BRADFORD, CLINTON, FRANKLIN, JUNIATA, MIFFLIN, MONTOUR NORTHUMBERLAND, PIKE, SCHUYLKILL, SNYDER, SULLIVAN SUSQUEHANNA, TIOGA, UNION, WAYNE, KENT, SUSSEX
PITTSBURGH, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALL METRO COUNTIES	11,096,420	426	BLAIR, BEAVER, ERIE, CAMBRIA, SOMERSET, ALLEGHENY, FAYETTE WASHINGTON, WESTMORELAND, MERCER
NONMETROPOLITAN ALLOCATION AREAS			
ALL NONMETRO COUNTIES	5,127,663	199	ARMSTRONG, BEDFORD, BUTLER, CAMERON, CLARION, CLEARFIELD CRAWFORD, ELK, FOREST, FULTON, GREENE, HUNTINGDON, INDIANA JEFFERSON, LAWRENCE, MCKEAN, POTTER, VENANGO, WARREN
RICHMOND, VIRGINIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Richmond-Petersburg-Hopewell, VA MSA	3,212,926	115	CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER HENRICO, NEW KENT, POWHATAN, PRINCE GEORGE, COLONIAL HEIGHTS HOPEWELL, PETERSBURG, RICHMOND
Norfolk-Virginia Beach-Newport News, Va MSA	4,622,290	166	GLOUCESTER, JAMES CITY, YORK, CHESAPEAKE, HAMPTON NEWPORT NEWS, NORFOLK, POQUOSON, PORTSMOUTH, SUFFOLK VIRGINIA BEACH, WILLIAMSBURG
All Other MSAs	2,651,863	97	ALBEMARLE, FLUVANNA, GREENE, CHARLOTTESVILLE, PITTSYLVANIA DANVILLE, AMHERST, CAMPBELL, LYNCHBURG, SCOTT, WASHINGTON BRISTOL, BOTETOURT, ROANOKE, ROANOKE, SALEM, STAFFORD
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetro Portion of Virginia	8,535,636	375	ACCOMACK, ALLEGHANY, AMELIA, APPOMATTOX, AUGUSTA, BATH BEDFORD, BLAND, BRUNSWICK, BUCHANAN, BUCKINGHAM, CAROLINE CARROLL, CHARLOTTE, CLARKE, CRAIG, CULPEPER, CUMBERLAND DICKENSON, ESSEX, FAUQUIER, FLOYD, FRANKLIN, FREDERICK, GILES GRAYSON, GREENSVILLE, HALIFAX, HENRY, HIGHLAND, ISLE OF WIGHT KING AND QUEEN, KING GEORGE, KING WILLIAM, LANCASTER, LEE LOUISA, LUNENBURG, MADISON, MATHEWS, MECKLENBURG, MIDDLESEX MONTGOMERY, NELSON, NORTHAMPTON, NORTHUMBERLAND, NOTTOWAY

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			ORANGE, PAGE, PATRICK, PRINCE EDWARD, PULASKI, RAPPAHANNOCK RICHMOND, ROCKBRIDGE, ROCKINGHAM, RUSSELL, SHENANDOAH, SMYTH SOUTHAMPTON, SPOTSYLVANIA, SURRY, SUSSEX, TAZEWELL, WARREN WESTMORELAND, WISE, WYTHE, BEDFORD, BUENA VISTA, CLIFTON FORGE COVINGTON, EMPORIA, FRANKLIN, FREDERICKSBURG, GALAX HARRISONBURG, LEXINGTON, MARTINSVILLE, NORTON, RADFORD SOUTH BOSTON, STAUNTON, WAYNESBORO, WINCHESTER
WASHINGTON, D.C. OFFICE			
METROPOLITAN ALLOCATION AREAS			
Washington, D.C.	21,283,152	498	MONTGOMERY, PRINCE GEORGE'S, WASHINGTON, ARLINGTON, FAIRFAX LOUDOUN, PRINCE WILLIAM, ALEXANDRIA, FAIRFAX, FALLS CHURCH MANASSAS, MANASSAS PARK
H.O REGION IV (ATLANTA)			
ATLANTA, GEORGIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
GA. METRO ALLOCATION AREA NO. 1	3,829,779	130	FULTON
GA. METRO ALLOCATION AREA NO. 2	1,923,271	65	DE KALB
GA. METRO ALLOCATION AREA NO. 3	2,905,189	100	BARROW, BUTTS, CHEROKEE, CLAYTON, COBB, COWETA, DOUGLAS FAYETTE, FORSYTH, GWINNETT, HENRY, NEWTON, PAULDING, ROCKDALE SPALDING, WALTON
GA. METRO ALLOCATION AREA NO. 4	6,470,775	219	BIBB, CHATTAHOOCHEE, HOUSTON, JONES, MUSCOGEE, PEACH, CATOOSA CHATHAM, CLARKE, COLUMBIA, DADE, DOUGHERTY, EFFINGHAM, JACKSON LEE, MCDUFFIE, MADISON, OCONEE, RICHMOND, WALKER
NONMETROPOLITAN ALLOCATION AREAS			
GA. NONMETRO ALLOCATION AREA NO. 1	1,525,558	77	BARTOW, CHATTOOGA, FLOYD, GILMER, GORDON, HARALSON, MURRAY PICKENS, POLK, WHITFIELD
GA. NONMETRO ALLOCATION AREA NO. 2	1,560,867	80	BANKS, DAWSON, ELBERT, FANNIN, FRANKLIN, GREENE, HABERSHAM HALL, HART, LINCOLN, LUMPKIN, MORGAN, OGLETHORPE, RABUN STEPHENS, TALIAFERRO, TOWNS, UNION, WARREN, WHITE, WILKES
GA. NONMETRO ALLOCATION AREA NO. 3	1,325,938	68	CARROLL, HARRIS, HEARD, LAMAR, MERIWETHER, MONROE, PIKE TALBOT, TROUP, UPSON
GA. NONMETRO ALLOCATION AREA NO. 4	1,436,611	73	BALDWIN, BEN HILL, BLECKLEY, CRAWFORD, CRISP, DODGE, GLASCOCK HANCOCK, JASPER, JOHNSON, LAURENS, PULASKI, PUTNAM, TELFAIR TWIGGS, WASHINGTON, WHEELER, WILCOX, WILKINSON
GA. NONMETRO ALLOCATION AREA NO. 5	1,641,177	82	BRYAN, BULLOCH, BURKE, CANDLER, EMANUEL, EVANS, JEFFERSON JENKINS, LIBERTY, LONG, MCINTOSH, MONTGOMERY, SCREVEN TATTNALL, TOOMBS, TREUTLEN
GA. NONMETRO ALLOCATION AREA NO. 6	2,137,891	108	BAKER, BROOKS, CALHOUN, CLAY, COLQUITT, DECATUR, DOOLY, EARLY GRADY, MACON, MARION, MILLER, MITCHELL, QUITMAN, RANDOLPH SCHLEY, SEMINOLE, STEWART, SUMTER, TAYLOR, TERRELL, THOMAS WEBSTER, WORTH
GA. NONMETRO ALLOCATION AREA NO. 7	2,298,960	118	APPLING, ATKINSON, BACON, BERRIEN, BRANTLEY, CAMDEN, CHARLTON CLINCH, COFFEE, COOK, ECHOLS, GLYNN, IRWIN, JEFF DAVIS, LANIER LOWNDES, PIERCE, TIFT, TURNER, WARE, WAYNE
BIRMINGHAM, ALABAMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	1,408,496	62	DALE, HOUSTON, AUTAUGA, ELMORE, MONTGOMERY, RUSSELL
METROPOLITAN ALLOCATION AREA 2	1,220,673	54	BALDWIN, MOBILE
METROPOLITAN ALLOCATION AREA 4	3,497,983	152	CALHOUN, BLOUNT, JEFFERSON, ST CLAIR, SHELBY, WALKER

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			TUSCALOOSA
METROPOLITAN ALLOCATION AREA 3	1,733,420	76	MADISON, COLBERT, LAUDERDALE, LAWRENCE, MORGAN, ETOWAH
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	1,419,360	77	COFFEE, PIKE, LEE, HENRY, GENEVA, CRENSHAW, BULLOCK, BARBOUR CHAMBERS
NON-METROPOLITAN ALLOCATION AREA 2	1,070,604	58	BUTLER, LOWNDES, MACON, COVINGTON, DALLAS
NON-METROPOLITAN ALLOCATION AREA 3	1,169,087	63	JACKSON, MARSHALL, DE KALB, CHEROKEE, WINSTON, LIMESTONE LAMAR, FRANKLIN, CULLMAN
NON-METROPOLITAN ALLOCATION AREA 4	1,258,387	70	CLEBURNE, CLAY, COOSA, TALLADEGA, TALLAPOOSA, RANDOLPH, HALE GREENE, FAYETTE, BIBB, CHILTON
NON-METROPOLITAN ALLOCATION AREA 5	1,043,744	58	CHOCTAW, CLARKE, CONECUH, ESCAMBIA, MARENGO, MARION, MONROE PERRY, PICKENS, SUMTER, WASHINGTON, WILCOX
CARIBBEAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
Caribbean - Metropolitan Areas	8,402,355	329	AGUADA MUNICIPIO, AGUADILLA MUNICIPIO, ISABELA MUNICIPIO MOCA MUNICIPIO, ARECIBO MUNICIPIO, CAMUY PUEBLO HATILLO MUNICIPIO, QUEBRADILLAS MUNICIPIO AGUAS BUENAS MUNICIPIO, CAGUAS MUNICIPIO, CAYEY MUNICIPIO CIDRA MUNICIPIO, GURABO MUNICIPIO, SAN LORENZO MUNICIPIO AÑASCO MUNICIPIO, CABO ROJO MUNICIPIO, HORMIGUEROS MUNICIPIO MAYAGUEZ MUNICIPIO, SAN GERMAN MUNICIPIO, JUANA DIAZ MUNICIPIO PONCE MUNICIPIO, BARCELONETA MUNICIPIO, BAYAMON MUNICIPIO CANOVANAS MUNICIPIO, CAROLINA MUNICIPIO, CATANO MUNICIPIO COROZAL MUNICIPIO, DORADO MUNICIPIO, FAJARDO MUNICIPIO FLORIDA MUNICIPIO, GUAYNABO MUNICIPIO, HUMACAO MUNICIPIO JUNCOS MUNICIPIO, LAS PIEDRAS MUNICIPIO, LOIZA MUNICIPIO LUQUILLO MUNICIPIO, MANATI MUNICIPIO, NARANJITO MUNICIPIO RIO GRANDE MUNICIPIO, SAN JUAN MUNICIPIO, TOA ALTA MUNICIPIO TOA BAJA MUNICIPIO, TRUJILLO ALTO MUNICIPIO VEGA ALTA MUNICIPIO, VEGA BAJA MUNICIPIO
NONMETROPOLITAN ALLOCATION AREAS			
Caribbean - Nonmetropolitan Areas	3,353,344	166	ADJUNTAS MUNICIPIO, AIBONITO MUNICIPIO, ARROYO MUNICIPIO BARRANQUITAS MUNICIPIO, CEIBA MUNICIPIO, CIALES MUNICIPIO COAMA MUNICIPIO, COMERIO MUNICIPIO, CULEBRA MUNICIPIO GUANICA MUNICIPIO, GUAYAMA MUNICIPIO, GUAYANILLA MUNICIPIO JAYUYA MUNICIPIO, LAJAS MUNICIPIO, LARES MUNICIPIO LAS MARIAS MUNICIPIO, MARICAO MUNICIPIO, MAUNABO MUNICIPIO MOROVIS MUNICIPIO, NAGUABO MUNICIPIO, OROCOVIS MUNICIPIO PATILLAS MUNICIPIO, PENUELAS MUNICIPIO, RINCON MUNICIPIO SABANA GRANDE MUNICIPIO, SALINAS MUNICIPIO SAN SEBASTIAN MUNICIPIO, SANTA ISABEL MUNICIPIO UTUADO MUNICIPIO, VIEQUES MUNICIPIO, VILLALBA MUNICIPIO YABUCOA MUNICIPIO, YAUCO MUNICIPIO, VIRGIN ISLANDS
COLUMBIA, SOUTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area 1	5,391,307	226	ANDERSON, AIKEN, BERKELEY, CHARLESTON, DORCHESTER, YORK LEXINGTON, RICHLAND, FLORENCE, GREENVILLE, PICKENS SPARTANBURG
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area 1	5,913,120	295	ABBEVILLE, ALLENDALE, BAMBERG, BARNWELL, BEAUFORT, CALHOUN CHEROKEE, CHESTER, CHESTERFIELD, CLARENDON, COLLETON

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
GREENSBORO, NORTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
CHARLOTTE-GASTONIA MSA	2,776,188	112	CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION
GREENSBORO--WINSTON SALEM--HIGH POINT MSA	2,429,451	99	DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES, YADKIN
RALEIGH-DURHAM MSA	2,411,549	99	DURHAM, FRANKLIN, ORANGE, WAKE
ALL OTHER METROPOLITAN AREAS, N.C.	2,452,423	100	BUNCOMBE, ALAMANCE, CUMBERLAND, ALEXANDER, BURKE, CATAWBA ONSLOW, NEW HANOVER
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN COUNTIES, WESTERN N.C.	6,298,769	298	ALLEGHANY, ANSON, ASHE, AVERY, CALDWELL, CASWELL, CHATHAM CHEROKEE, CLAY, CLEVELAND, GRAHAM, GRANVILLE, HAYWOOD HENDERSON, IREDELL, JACKSON, JOHNSTON, LEE, MCDOWELL, MACON MADISON, MITCHELL, MONTGOMERY, MOORE, PERSON, POLK, RICHMOND ROCKINGHAM, RUTHERFORD, STANLY, SURRY, SWAIN, TRANSYLVANIA VANCE, WARREN, WATAUGA, WILKES, YANCEY
NON-METROPOLITAN COUNTIES, EASTERN N.C.	7,628,996	355	BEAUFORT, BERTIE, BLADEN, BRUNSWICK, CAMDEN, CARTERET, CHOWAN COLUMBUS, CRAVEN, CURRITUCK, DARE, DUPLIN, EDGECOMBE, GATES GREENE, HALIFAX, HARNETT, HERTFORD, HOKE, HYDE, JONES, LENOIR MARTIN, NASH, NORTHAMPTON, PAMLICO, PASQUOTANK, PENDER PERQUIMANS, PITT, ROBESON, SAMPSON, SCOTLAND, TYRRELL WASHINGTON, WAYNE, WILSON
JACKSON, MISSISSIPPI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area No. 1	2,151,713	85	HANCOCK, HARRISON, HINDS, MADISON, RANKIN, DE SOTO, JACKSON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area No. 1	10,308,304	532	ADAMS, ALCORN, AMITE, ATTALA, BENTON, BOLIVAR, CALHOUN CARROLL, CHICKASAW, CHOCTAW, CLAIBORNE, CLARKE, CLAY, COAHOMA COPIAH, COVINGTON, FORREST, FRANKLIN, GEORGE, GREENE, GRENADA HOLMES, HUMPHREYS, ISSAQUENA, ITAWAMBA, JASPER, JEFFERSON JEFFERSON DAVIS, JONES, KEMPER, LAFAYETTE, LAMAR, LAUDERDALE LAWRENCE, LEAKE, LEE, LEFLORE, LINCOLN, LOWNDES, MARION MARSHALL, MONROE, MONTGOMERY, NESHOBA, NEWTON, NOXUBEE OKTIBBEHA, PANOLA, PEARL RIVER, PERRY, PIKE, PONTOTOC PRENTISS, QUITMAN, SCOTT, SHARKEY, SIMPSON, SMITH, STONE SUNFLOWER, TALLAHATCHIE, TATE, TIPPAH, TISHOMINGO, TUNICA UNION, WALTHALL, WARREN, WASHINGTON, WAYNE, WEBSTER, WILKINSON WINSTON, YALOBUSHA, YAZOO
JACKSONVILLE, FLORIDA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MIAMI-FT LAUDERDALE	16,349,476	536	DADE, BROWARD
WEST PALM BEACH-FT PIERCE	2,332,824	78	PALM BEACH, MARTIN, ST LUCIE
TAMPA-ST PETERSBURG-CLEARWATER	5,463,075	180	HERNANDO, HILLSBOROUGH, PASCO, PINELLAS
JACKSONVILLE-OCALA-DAYTONA BEACH-GAINESVILLE	5,423,716	178	CLAY, DUVAL, NASSAU, ST JOHN, MARION, VOLUSIA, ALACHUA BRADFORD
ORLANDO-MELBOURNE	3,237,592	106	ORANGE, OSCEOLA, SEMINOLE, BREVARD
PENSACOLA-FT WALTON-PANAMA CITY-TALLAHASSEE	2,477,136	81	ESCAMBIA, SANTA ROSA, OKALOOSA, BAY, GADSDEN, LEON
LAKELAND-BRADENTON-NAPLES-SARASOTA-FT MYERS	2,876,843	95	POLK, MANATEE, COLLIER, SARASOTA, LEE

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	4,367,039	175	BAKER, CALHOUN, CHARLOTTE, CITRUS, COLUMBIA, DE SOTO, DIXIE FLAGLER, FRANKLIN, GILCHRIST, GLADES, GULF, HAMILTON, HARDEE HENDRY, HIGHLANDS, HOLMES, INDIAN RIVER, JACKSON, JEFFERSON LAFAYETTE, LAKE, LEVY, LIBERTY, MADISON, MONROE, OKEECHOBEE PUTNAM, SUMTER, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON WASHINGTON
LOUISVILLE, KENTUCKY OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA	3,849,844	160	BOURBON, BULLITT, CLARK, FAYETTE, JEFFERSON, JESSAMINE, OLDHAM SCOTT, SHELBY, WOODFORD
METROPOLITAN ALLOCATION AREA 2	1,792,570	74	BOONE, BOYD, CAMPBELL, CARTER, CHRISTIAN, DAVIESS, GREENUP HENDERSON, KENTON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA - NORTHEAST	1,051,581	52	BRACKEN, ROBERTSON, MASON, FLEMING, LEWIS, MONTGOMERY, BATH ROWAN, POWELL, MENIFEE, MORGAN, ELLIOTT, LAWRENCE, JOHNSON MARTIN
NONMETROPOLITAN ALLOCATION AREA - SOUTH CENTR	1,777,742	88	ANDERSON, FRANKLIN, HARRISON, NICHOLAS, CUMBERLAND, ADAIR GREEN, TAYLOR, CLINTON, RUSSELL, WAYNE, MCCREARY, PULASKI CASEY, LINCOLN, GARRARD, MADISON
NONMETROPOLITAN ALLOCATION AREA - SOUTHEAST	2,754,864	138	ESTILL, LEE, WOLFE, MAGOFFIN, FLOYD, PIKE, JACKSON, LAUREL WHITLEY, KNOX, BELL, CLAY, LESLIE, HARLAN, OWSLEY, BREATHITT PERRY, KNOTT, LETCHER, ROCKCASTLE
NONMETROPOLITAN ALLOCATION AREA - MIDWEST	1,395,574	70	UNION, WEBSTER, MCLEAN, HANCOCK, OHIO, BUTLER, LOGAN, SIMPSON WARREN, ALLEN, MONROE, METCALFE, BARREN, HART, EDMONSON
NONMETROPOLITAN ALLOCATION AREA - FAR WEST	1,311,867	64	FULTON, BALLARD, CARLISLE, HICKMAN, MCCRACKEN, GRAVES CALLOWAY, MARSHALL, LIVINGSTON, CRITTENDEN, LYON, TRIGG CALDWELL, HOPKINS, MUHLENBERG, TODD
NONMETROPOLITAN ALLOCATION AREA - NORTH CETN\	1,429,924	70	GRAYSON, BRECKINRIDGE, MEADE, HARDIN, LARUE, NELSON, MARION WASHINGTON, SPENCER, TRIMBLE, HENRY, CARROLL, GALLATIN, OWEN GRANT, PENDLETON, MERCER, BOYLE
KNOXVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,620,543	155	HAMILTON, MARION, SEQUATCHIE, CARTER, HAWKINS, SULLIVAN UNICOI, WASHINGTON, ANDERSON, BLOUNT, GRAINGER, JEFFERSON KNOX, SEVIER, UNION
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	2,237,751	117	BLEDSOE, BRADLEY, CAMPBELL, CLAIBORNE, COCKE, CUMBERLAND FENTRESS, GREENE, GRUNDY, HAMBLEN, HANCOCK, JOHNSON, LOUDON MCMINN, MEIGS, MONROE, MORGAN, PICKETT, POLK, RHEA, ROANE SCOTT
NASHVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
MEMPHIS-JACKSON TN. ALLOCATION AREA	3,817,182	147	SHELBY, TIPTON, MADISON
NASHVILLE-CLARKSVILLE TN. ALLOCATION AREA	3,445,066	132	CHEATHAM, DAVIDSON, DICKSON, ROBERTSON, RUTHERFORD, SUMNER WILLIAMSON, WILSON, MONTGOMERY
NONMETROPOLITAN ALLOCATION AREAS			
WEST TN. ALLOCATION AREA	1,956,700	102	BENTON, CARROLL, CHESTER, CROCKETT, DECATUR, DYER, FAYETTE GIBSON, HARDEMAN, HARDIN, HAYWOOD, HENDERSON, HENRY, LAKE LAUDERDALE, MCNAIRY, OBION, WEAKLEY

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
MIDDLE TN. ALLOCATION AREA	2,279,395	115	BEDFORD, CANNON, CLAY, COFFEE, DE KALB, FRANKLIN, GILES HICKMAN, JACKSON, LAWRENCE, LEWIS, LINCOLN, MACON, MARSHALL MAURY, MOORE, OVERTON, PERRY, PUTNAM, SMITH, VAN BUREN, WARREN WAYNE, WHITE, STEWART, HOUSTON, HUMPHREYS, TROUSDALE
HUD REGION V (CHICAGO)			
CHICAGO, ILLINOIS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO I CHICAGO	43,494,438	1222	COOK, DU PAGE, MCHENRY
METRO II CHICAGO COLLAR COUNTIES	2,972,458	84	LAKE, KANE, KENDALL, GRUNDY, WILL
METRO III ROCKFORD	2,166,063	61	BOONE, WINNEBAGO
METRO IV BLOMINGTON CHAMPAIGN DECATUR KANKE.	2,373,352	67	MCLEAN, CHAMPAIGN, MACON, KANKAKEE
METRO V PEORIA ROCK ISLAND SPRINGFIELD	2,787,057	79	PEORIA, TAZEWELL, WOODFORD, HENRY, ROCK ISLAND, MENARD SANGAMON
METRO VI ST. LOUIS-ILLINOIS PORTION	2,423,517	67	CLINTON, JERSEY, MADISON, MONROE, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
NON-METRO I	3,422,901	142	ADAMS, BROWN, BUREAU, CALHOUN, CARROLL, CASS, FULTON, GREENE HANCOCK, HENDERSON, JO DAVIESS, KNOX, LEE, MARSHALL, MCDONOUGH MERCER, OGLE, PIKE, PUTNAM, SCHUYLER, SCOTT, STARK, STEPHENSON WARREN, WHITESIDE
NON-METRO II	4,382,985	185	BOND, CHRISTIAN, COLES, DE KALB, DE WITT, DOUGLAS, EFFINGHAM FAYETTE, FORD, IROQUOIS, LA SALLE, LIVINGSTON, LOGAN, MACOUPIN MASON, MONTGOMERY, MORGAN, MOULTRIE, PIATT, SHELBY, VERMILION
NON-METRO III	3,194,764	136	ALEXANDER, CLARK, CLAY, CRAWFORD, CUMBERLAND, EDGAR, EDWARDS FRANKLIN, GALLATIN, HAMILTON, HARDIN, JACKSON, JASPER JEFFERSON, JOHNSON, LAWRENCE, MARION, MASSAC, PERRY, POPE PULASKI, RANDOLPH, RICHLAND, SALINE, UNION, WABASH, WASHINGTON WAYNE, WHITE, WILLIAMSON
CINCINNATI, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - METROPOLITAN	8,210,678	319	BUTLER, CLERMONT, GREENE, HAMILTON, MIAMI, MONTGOMERY, WARREN
NONMETROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - NONMETROPOLITAN	1,251,391	58	ADAMS, BROWN, CLINTON, DARKE, HIGHLAND, PREBLE
CLEVELAND, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
AKRON-CANTON MSA AREA	2,711,665	103	PORTAGE, SUMMIT, CARROLL, STARK
CLEVELAND PMSA AREA	8,030,710	307	CUYAHOGA, GEAUGA, LAKE, MEDINA
LORAIN-TOLEDO-MANSFIELD MSA AREA	3,147,486	120	FULTON, LUCAS, WOOD, RICHLAND, LORAIN
STEUBENVILLE-YOUNGSTOWN MSA AREA	1,574,284	60	JEFFERSON, MAHONING, TRUMBULL
NONMETROPOLITAN ALLOCATION AREAS			
CLEVELAND NONMETRO AREA 1	2,210,918	94	WAYNE, ERIE, SENECA, WYANDOT, OTTAWA, SANDUSKY, HANCOCK, HENRY PAULDING, DEFIANCE, WILLIAMS
CLEVELAND NONMETRO AREA 2	2,018,057	85	ASHTABULA, COLUMBIANA, HARRISON, TUSCARAWAS, HOLMES, CRAWFORD ASHLAND, HURON
COLUMBUS, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - METROPOLITAN	6,247,489	246	LAWRENCE, DELAWARE, FAIRFIELD, FRANKLIN, LICKING, MADISON PICKAWAY, UNION, CLARK, ALLEN, AUGLAIZE, WASHINGTON, BELMONT
NONMETROPOLITAN ALLOCATION AREAS			

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
COLUMBUS OFFICE - NONMETROPOLITAN SOUTH	2,575,056	117	ATHENS, FAYETTE, GALLIA, HOCKING, JACKSON, MEIGS, MORGAN PERRY, PIKE, ROSS, SCIOTO, VINTON
COLUMBUS OFFICE - NONMETROPOLITAN NORTH	2,256,910	103	CHAMPAIGN, COSHOCTON, GUERNSEY, HARDIN, KNOX, LOGAN, MARION MERCER, MONROE, MORROW, MUSKINGUM, NOBLE, PUTNAM, SHELBY VAN WERT
DETROIT, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
ANN ARBOR,FLINT,SAGINAW-BAY-MIDLAND MSAs	4,237,046	147	WASHTENAW, GENESEE, BAY, MIDLAND, SAGINAW
WAYNE COUNTY	10,674,598	367	WAYNE
DETROIT PMSA LESS WAYNE COUNTY	4,952,925	171	LAPEER, LIVINGSTON, MACOMB, MONROE, OAKLAND, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
DETROIT OFFICE NON-METRO	1,587,524	68	ALCONA, ALPENA, ARENAC, GLADWIN, HURON, IOSCO, LENAWEE MONTMORENCY, OGEMAW, OSCODA, PRESQUE ISLE, SANILAC, SHIAWASSEE TUSCOLA
GRAND RAPIDS, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
GRAND RAPIDS--LANSING-E. LANSING MSAs	3,303,513	124	KENT, OTTAWA, CLINTON, EATON, INGHAM
CALHOUN,BERRIEN,JACKSON,KALAMAZOO&MUSKEGON CO	2,602,298	98	CALHOUN, BERRIEN, JACKSON, KALAMAZOO, MUSKEGON
NONMETROPOLITAN ALLOCATION AREAS			
NON METRO--UPPER PENISULAR	1,541,015	64	ALGER, BARAGA, CHIPPEWA, DELTA, DICKINSON, GOGEBIC, HOUGHTON KEWEENAW, IRON, LUCE, MACKINAC, MARQUETTE, MENOMINEE ONTONAGON, SCHOOLCRAFT
NON METRO--LOWER PENISULAR	4,231,335	177	IONIA, ALLEGAN, ANTRIM, BARRY, BENZIE, BRANCH, CASS CHARLEVOIX, CHEBOYGAN, CLARE, CRAWFORD, EMMET, GRAND TRAVERSE GRATIOT, HILLSDALE, ISABELLA, KALKASKA, LAKE, LEELANAU MANISTEE, MASON, MECOSTA, MISSAUKEE, MONTCALM, NEWAYGO, OCEANA OSCEOLA, OTSEGO, ROSCOMMON, ST JOSEPH, VAN BUREN, WEXFORD
INDIANAPOLIS, INDIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO NORTH	3,304,272	125	LAKE, PORTER, ST JOSEPH, ELKHART, ALLEN, DE KALB, WHITLEY
METRO CENTRAL	4,859,614	185	TIPPECANOE, HOWARD, TIPTON, BOONE, HAMILTON, HANCOCK HENDRICKS, JOHNSON, MARION, MORGAN, SHELBY, MADISON, DELAWARE
METRO SOUTH	3,027,209	115	CLAY, VIGO, MONROE, DEARBORN, POSEY, VANDERBURGH, WARRICK CLARK, FLOYD, HARRISON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO NORTH	1,862,599	86	NEWTON, BENTON, JASPER, LA PORTE, STARKE, PULASKI, WHITE CARROLL, MARSHALL, FULTON, CASS, KOSCIUSKO, MIAMI, WABASH HUNTINGTON, WELLS, ADAMS, LAGRANGE, NOBLE, STEUBEN
NONMETRO CENTRAL	1,917,753	87	WARREN, VERMILLION, FOUNTAIN, PARKE, MONTGOMERY, PUTNAM CLINTON, GRANT, BLACKFORD, JAY, RANDOLPH, HENRY, WAYNE, RUSH FAYETTE, UNION
NONMETRO SOUTH	2,317,022	105	SULLIVAN, KNOX, GIBSON, OWEN, GREENE, DAVIESS, MARTIN, PIKE DUBOIS, SPENCER, PERRY, LAWRENCE, ORANGE, CRAWFORD, BROWN JACKSON, WASHINGTON, BARTHOLOMEW, DECATUR, JENNINGS, SCOTT JEFFERSON, RIPLEY, FRANKLIN, OHIO, SWITZERLAND
MILWAUKEE, WISCONSIN OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area #1	3,225,090	118	CALUMET, OUTAGAMIE, WINNEBAGO, DOUGLAS, CHIPPEWA, EAU CLAIRE BROWN, LA CROSSE, ST CROIX, SHEBOYGAN, MARATHON

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Metropolitan Allocation Area #2	3,213,326	118	ROCK, KENOSHA, DANE, RACINE
Metropolitan Allocation Area #3	6,502,195	239	MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area #1	2,432,639	104	COLUMBIA, CRAWFORD, DODGE, GRANT, GREEN, IOWA, JEFFERSON LAFAYETTE, RICHLAND, SAUK, VERNON, WALWORTH
Nonmetropolitan Allocation Area #2	2,466,613	107	ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CLARK, DUNN, IRON JACKSON, JUNEAU, MONROE, PEPIN, PIERCE, POLK, PRICE, RUSK SAWYER, TAYLOR, TREMPEALEAU, WASHBURN, WOOD
Nonmetropolitan Allocation Area #3	2,659,226	115	ADAMS, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MARQUETTE OCONTO, ONEIDA, PORTAGE, SHAWANO, VILAS, WAUPACA, WAUSHARA MENOMINEE
MINNEAPOLIS-ST. PAUL, MINNESOTA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MINNEAPOLIS/ST. PAUL MSA	9,113,367	291	ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY SCOTT, WASHINGTON, WRIGHT
GREATER MINNESOTA METRO	1,951,057	63	ST LOUIS, OLMSTED, CLAY, BENTON, SHERBURNE, STEARNS
NONMETROPOLITAN ALLOCATION AREAS			
NORTHERN MINNESOTA	2,536,374	110	KITTSON, ROSEAU, MARSHALL, PENNINGTON, RED LAKE, POLK, NORMAN LAKE OF THE WOODS, BELTRAMI, CLEARWATER, MAHNOMEN, HUBBARD BECKER, WILKIN, OTTER TAIL, GRANT, DOUGLAS, TRAVERSE, STEVENS POPE, KODCHICHING, ITASCA, AITKIN, CARLTON, LAKE, COOK, CASS CROW WING, WADENA, TODD, MORRISON, MILLE LACS, KANABEC, PINE
SOUTHWESTERN MINNESOTA	1,377,039	59	BIG STONE, SWIFT, CHIPPEWA, LAC QUI PARLE, YELLOW MEDICINE KANDIYOHI, MEEKER, RENVILLE, MCLEOD, LINCOLN, LYON, REDWOOD PIPESTONE, MURRAY, COTTONWOOD, ROCK, NOBLES, JACKSON
SOUTHEASTERN MINNESOTA	2,331,354	105	SIBLEY, NICOLLET, LE SUEUR, BROWN, WATONWAN, BLUE EARTH WASECA, MARTIN, FARIBAULT, RICE, GOODHUE, WABASHA, STEELE DODGE, WINONA, FREEBORN, MOWER, FILLMORE, HOUSTON
HUD REGION VI (FORT WORTH)			
FORT WORTH, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
CENTRAL TEXAS	1,976,136	70	BELL, CORYELL, TOM GREEN, MCLENNAN
DALLAS TEXAS	6,492,369	233	COLLIN, DALLAS, DENTON, ELLIS, KAUFMAN, ROCKWALL
EAST TEXAS	1,435,626	53	GREGG, HARRISON, GRAYSON, BOWIE, SMITH
FORT WORTH-ARLINGTON	2,691,999	97	JOHNSON, PARKER, TARRANT
FAR WEST TEXAS	4,035,207	146	EL PASO, MIDLAND, ECTOR
WEST TEXAS	2,041,225	72	TAYLOR, POTTER, RANDALL, LUBBOCK, WICHITA
NEW MEXICO	2,648,560	95	BERNALILLO, DONA ANA, LOS ALAMOS, SANTA FE
NONMETROPOLITAN ALLOCATION AREAS			
CENTRAL TEXAS	1,497,812	72	MILAM, LAMPASAS, SAN SABA, HAMILTON, MILLS, HILL, KIMBLE REAGAN, MASON, COKE, SUTTON, CONCHO, SCHLEICHER, CROCKETT MARTIN, MENARD, STERLING, IRION, NOLAN, KENT, BROWN, JONES STONEWALL, HASKELL, STEPHENS, FISHER, SCURRY, EASTLAND, KNOX COMANCHE, RUNNELS, COLEMAN, MITCHELL, SHACKELFORD THROCKMORTON, CALLAHAN
FAR WEST TEXAS	1,788,354	83	REEVES, ANDREWS, MARION, HOWARD, PECOS, GAINES, TERRELL, CRANE UPTON, LOVING, WARD, DAWSON, GLASSCOCK, BORDEN, WINKLER BAILEY, KING, COCHRAN, LAMB, DICKENS, LYNN, GARZA, MOTLEY HOCKLEY, TERRY, FLOYD, CROSBY, HALE, YOAKUM, HUDSPETH

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			JEFF DAVIS, CULBERSON, BREWSTER, PRESIDIO
NORTH CENTRAL TEXAS	1,570,853	73	LIMESTONE, BOSQUE, FREESTONE, FALLS, HUNT, PALO PINTO, WISE ERATH, HOOD, SOMERVELL, NAVARRO, FANNIN, COOKE
NORTHEAST TEXAS	1,851,919	86	FRANKLIN, HOPKINS, TITUS, DELTA, MORRIS, RED RIVER, LAMAR CASS, HENDERSON, MCCULLOCH, CAMP, RAINS, CHEROKEE, VAN ZANDT RUSK, ANDERSON, WOOD, UPSHUR, PANOLA
TEXAS PANHANDLE	1,259,993	57	JACK, YOUNG, HARDEMAN, ARCHER, CLAY, MONTAGUE, FOARD, COTTLE BAYLOR, WILBARGER, HEMPHILL, HANSFORD, HALL, SWISHER, GRAY ROBERTS, DONLEY, OLDHAM, DEAF SMITH, MOORE, DALLAM, HUTCHINSON COLLINGSWORTH, WHEELER, CHILDRESS, PARMER, CASTRO, LIPSCOMB CARSON, SHERMAN, HARTLEY, OCHILTREE, BRISCOE, ARMSTRONG
NORTH & WEST NEW MEXICO	1,465,206	68	COLFAX, MCKINLEY, MORA, RIO ARRIBA, SAN JUAN, SAN MIGUEL SANDOVAL, TAOS, TORRANCE, VALENCIA
SOUTH & EAST NEW MEXICO	1,606,226	75	CATRON, CHAVES, CURRY, DE BACA, EDDY, GRANT, GUADALUPE HARDING, HIDALGO, LEA, LINCOLN, LUNA, OTERO, QUAY, ROOSEVELT SIERRA, SOCORRO, UNION
HOUSTON, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
BEAUMONT-PORT ARTHUR MSA	1,171,738	47	HARDIN, JEFFERSON, ORANGE
HOUSTON PMSA	9,163,359	360	FORT BEND, HARRIS, LIBERTY, MONTGOMERY, WALLER
SOUTHEAST TEXAS METO	1,537,269	61	BRAZORIA, BRAZOS, GALVESTON
NONMETROPOLITAN ALLOCATION AREAS			
NONMET BVDC AND HGAC NON-METRO	1,518,092	65	AUSTIN, BURLESON, CHAMBERS, COLORADO, GRIMES, LEON, MADISON MATAGORDA, ROBERTSON, WASHINGTON, WALKER, WHARTON
DEEP EAST TEXAS NON-METRO	1,277,506	57	ANGELINA, HOUSTON, JASPER, NACOGDOCHES, NEWTON, POLK, SABINE SAN AUGUSTINE, SAN JACINTO, SHELBY, TRINITY, TYLER
LITTLE ROCK, ARKANSAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO 1	1,350,594	56	FAULKNER, LONOKE, PULASKI, SALINE
METRO 2	1,551,554	64	CRAWFORD, SEBASTIAN, JEFFERSON, MILLER, CRITTENDEN, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
NORTH	1,340,739	71	CLEBURNE, FULTON, INDEPENDENCE, IZARD, JACKSON, SHARP, STONE VAN BUREN, WHITE, WOODRUFF, BAXTER, BENTON, BOONE, CARROLL MADISON, MARION, NEWTON, SEARCY
NORTHEAST	1,239,137	66	CLAY, CRAIGHEAD, GREENE, LAWRENCE, MISSISSIPPI, POINSETT RANDOLPH
EAST	1,179,531	62	MONROE, PRAIRIE, CROSS, LEE, PHILLIPS, ST FRANCIS
SOUTH	1,560,309	80	ARKANSAS, ASHLEY, BRADLEY, CHICOT, CLEVELAND, DESHA, DREW GRANT, LINCOLN, CALHOUN, COLUMBIA, DALLAS, HEMPSTEAD, HOWARD LAFAYETTE, LITTLE RIVER, NEVADA, OUACHITA, SEVIER, UNION
WEST	1,434,203	76	CLARK, CONWAY, GARLAND, HOT SPRING, JOHNSON, MONTGOMERY, PERRY PIKE, POPE, YELL, FRANKLIN, LOGAN, POLK, SCOTT
NEW ORLEANS, LOUISIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Baton Rouge Metro Area	1,492,351	55	ASCENSION PARISH, EAST BATON ROUGE PARISH, LIVINGSTON PARISH WEST BATON ROUGE PARISH
South-Western Louisiana Metro Areas	2,145,386	78	LAFOURCHE PARISH, TERREBONNE PARISH, LAFAYETTE PARISH ST MARTIN PARISH, CALCASIEU PARISH
North-Central Louisiana Metro Areas	2,126,983	79	BOSSIER PARISH, CADDO PARISH, OUACHITA PARISH, RAPIDES PARISH
New Orleans Metro Area	7,055,947	258	JEFFERSON PARISH, ORLEANS PARISH, ST BERNARD PARISH

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			ST CHARLES PARISH, ST JOHN THE BAPTIST PAR ST TAMMANY PARISH
North-Western Louisiana	1,279,318	71	WEBSTER PARISH, CLAIBORNE PARISH, LINCOLN PARISH BIENVILLE PARISH, DE SOTO PARISH, RED RIVER PARISH WINN PARISH, SABINE PARISH, NATCHITOCHES PARISH, GRANT PARISH VERNON PARISH
South-Westerr Louisiana	2,020,801	111	BEAUREGARD PARISH, ALLEN PARISH, EVANGELINE PARISH ST LANDRY PARISH, JEFFERSON DAVIS PARISH, ACADIA PARISH CAMERON PARISH, VERMILION PARISH, IBERIA PARISH ST MARY PARISH, ASSUMPTION PARISH
North-Eastern Louisiana	1,076,609	59	UNION PARISH, MOREHOUSE PARISH, EAST CARROLL PARISH WEST CARROLL PARISH, JACKSON PARISH, RICHLAND PARISH MADISON PARISH, CALDWELL PARISH, FRANKLIN PARISH TENSAS PARISH, LA SALLE PARISH, CATAHOULA PARISH CONCORDIA PARISH, AVOYELLES PARISH
South-Eastern Louisiana	1,347,170	75	POINTE COUPEE PARISH, WEST FELICIANA PARISH EAST FELICIANA PARISH, ST HELENA PARISH, TANGIPAHOA PARISH WASHINGTON PARISH, ST JAMES PARISH, PLAQUEMINES PARISH IBERVILLE PARISH
OKLAHOMA CITY, OKLAHOMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
WESTERN METRO	3,313,066	128	CANADIAN, CLEVELAND, LOGAN, MCCLAIN, OKLAHOMA, POTTAWATOMIE COMANCHE, GARFIELD
EASTERN METRO	1,876,389	73	CREEK, OSAGE, ROGERS, TULSA, WAGONER, SEQUOYAH
NONMETROPOLITAN ALLOCATION AREAS			
WESTERN NON-METRO	2,033,217	107	ALFALFA, BEAVER, BECKHAM, BLAINE, CADDO, CIMARRON, COTTON CUSTER, DEWEY, ELLIS, GRADY, GRANT, GREER, HARMON, HARPER JACKSON, JEFFERSON, KAY, KINGFISHER, KIOWA, MAJOR, NOBLE ROGER MILLS, STEPHENS, TEXAS, TILLMAN, WASHITA, WOODS WOODWARD
CENTRAL NON-METRO	1,581,401	80	ATOKA, BRYAN, CARTER, COAL, GARVIN, HUGHES, JOHNSTON, LINCOLN LOVE, MARSHALL, MURRAY, OKFUSKEE, PAWNEE, PAYNE, PONTOTOC SEMINOLE
EASTERN NON-METRO	1,971,730	104	ADAIR, CHEROKEE, CHOCTAW, CRAIG, DELAWARE, HASKELL, LATIMER LE FLORE, MCCURTAIN, MCINTOSH, MAYES, MUSKOGEE, NOWATA OKMULGEE, OTTAWA, PITTSBURG, PUSHMATAHA, WASHINGTON
SAN ANTONIO, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Area A	2,752,640	99	HIDALGO, CAMERON, WEBB
Metropolitan Area B	4,269,786	154	BEXAR, COMAL, GUADALUPE
Metropolitan Area C	2,621,347	94	TRAVIS, WILLIAMSON, HAYS
Metropolitan Area D	1,680,560	61	VICTORIA, NUECES, SAN PATRICIO
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Area A	1,180,893	58	VAL VERDE, EDWARDS, REAL, KERR, BANDERA, KINNEY, UVALDE MEDINA, MAVERICK, ZAVALA, FRIO, DIMMIT, LA SALLE
Nonmetropolitan Area B	1,152,802	56	ATASCOSA, MCMULLEN, LIVE OAK, BEE, REFUGIO, ARANSAS, DUVAL JIM WELLS, KLEBERG, ZAPATA, JIM HOGG, BROOKS, KENEDY, STARR WILLACY
Nonmetropolitan Area C	1,326,302	64	CALHOUN, GOLIAD, JACKSON, KARNES, DE WITT, LAVACA, WILSON GONZALES, KENDALL, GILLESPIE, LLANO, BURNET, BLANCO, CALDWELL

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			BASTROP, LEE, FAYETTE
HUD REGION VII (KANSAS CITY)			
DES MOINES, IOWA OFFICE			
METROPOLITAN ALLOCATION AREAS	2,357,529	85	BLACK HAWK, BREMER, DUBUQUE, JOHNSON, LINN, SCOTT
Metro-East	1,781,524	63	DALLAS, POLK, POTTAWATTAMIE, WARREN, WOODBURY
Metro-West			
NONMETROPOLITAN ALLOCATION AREA	2,880,095	125	ALLAMAKEE, BENTON, BUCHANAN, BUTLER, CEDAR, CHICKASAW, CLAYTON CLINTON, DELAWARE, DES MOINES, FAYETTE, GRUNDY, HARDIN, HENRY HOWARD, IOWA, JACKSON, JONES, LEE, LOUISA, MARSHALL, MUSCATINE POWESHIEK, TAMA, WASHINGTON, WINNESHIEK
Non-Metro-East			
Non-Metro-Northwest/Central	2,705,210	114	AUDUBON, BUENA VISTA, CALHOUN, CARROLL, CERRO GORDO, CHEROKEE CLAY, CRAWFORD, DICKINSON, EMMET, FLOYD, FRANKLIN, GREENE GUTHRIE, HAMILTON, HANCOCK, HUMBOLDT, IDA, KOSSUTH, LYON MITCHELL, MONONA, O'BRIEN, OSCEOLA, PALO ALTO, PLYMOUTH POCAHONTAS, SAC, SIOUX, WEBSTER, WINNEBAGO, WORTH, WRIGHT
Non-Metro-Southwest/Central	2,734,710	119	ADAIR, ADAMS, APPANOOSE, BOONE, CASS, CLARKE, DAVIS, DECATUR FREMONT, HARRISON, JASPER, JEFFERSON, KEOKUK, LUCAS, MADISON MAHASKA, MARION, MILLS, MONROE, MONTGOMERY, PAGE, RINGGOLD SHELBY, STORY, TAYLOR, UNION, VAN BUREN, WAPELLO, WAYNE
KANSAS CITY, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS	3,374,081	131	CASS, CLAY, JACKSON, LAFAYETTE, PLATTE, RAY
METROPOLITAN KANSAS CITY, MISSOURI	1,316,672	51	JASPER, NEWTON, BUCHANAN, CHRISTIAN, GREENE
METRO JOPLIN, SPRINGFIELD & ST. JOSEPH, MO.	1,634,171	64	JOHNSON, LEAVENWORTH, MIAMI, WYANDOTTE, DOUGLAS
METRO KANSAS CITY, KANSAS & LAWRENCE	1,870,290	73	BUTLER, HARVEY, SEDGWICK, SHAWNEE
METRO WICHITA & TOPEKA, KANSAS			
NONMETROPOLITAN ALLOCATION AREAS	2,415,856	118	ANDREW, ATCHISON, BARRY, BARTON, BATES, BENTON, CALDWELL CAMDEN, CARROLL, CEDAR, CHARITON, CLINTON, DADE, DALLAS DAVIESS, DE KALB, GENTRY, GRUNDY, HARRISON, HENRY, HICKORY HOLT, JOHNSON, LACLEDE, LAWRENCE, LINN, LIVINGSTON, MCDONALD MERCER, MILLER, MORGAN, NODAWAY, PETTIS, POLK, PULASKI, PUTNAM ST CLAIR, SALINE, STONE, SULLIVAN, TANEY, VERNON, WEBSTER WORTH
WESTERN NON-METROPOLITAN MISSOURI			
EASTERN NON-METROPOLITAN KANSAS	1,671,283	82	ALLEN, ANDERSON, ATCHISON, BOURBON, BROWN, CHASE, CHEROKEE COFFEY, CRAWFORD, DONIPHAN, FRANKLIN, JACKSON, JEFFERSON LABETTE, LINN, LYON, MARSHALL, MONTGOMERY, NEMAHA, NEOSHO OSAGE, WILSON, WOODSON
CENTRAL AND WESTERN NON-METROPOLITAN KANSAS	3,293,716	159	BARBER, BARTON, CHAUTAUQUA, CHEYENNE, CLARK, CLAY, CLOUD COMANCHE, COWLEY, DECATUR, DICKINSON, EDWARDS, ELK, ELLIS ELLSWORTH, FINNEY, FORD, GEARY, GOVE, GRAHAM, GRANT, GRAY GREELEY, GREENWOOD, HAMILTON, HARPER, HASKELL, HODGEMAN JEWELL, KEARNY, KINGMAN, KIOWA, LANE, LINCOLN, LOGAN MCPHERSON, MARION, MEADE, MITCHELL, MORRIS, MORTON, NESS NORTON, OSBORNE, OTTAWA, PAWNEE, PHILLIPS, POTTAWATOMIE, PRATT RAWLINS, RENO, REPUBLIC, RICE, RILEY, ROOKS, RUSH, RUSSELL SALINE, SCOTT, SEWARD, SHERIDAN, SHERMAN, SMITH, STAFFORD STANTON, STEVENS, SUMNER, THOMAS, TREGO, WABAUNSEE, WALLACE WASHINGTON, WICHITA

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
OMAHA, NEBRASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metro-Nebraska	2,413,909	94	DAKOTA, DOUGLAS, LANCASTER, SARPY, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
East-Nebraska	1,810,969	81	ANTELOPE, BOONE, BURT, BUTLER, CASS, CEDAR, CLAY, COLFAX CUMING, DIXON, DODGE, FILLMORE, GAGE, HAMILTON, JEFFERSON JOHNSON, KNOX, MADISON, MERRICK, NANCE, NEMAHA, NUCKOLLS, OTOE PAWNEE, PIERCE, PLATTE, POLK, RICHARDSON, SALINE, SAUNDERS SEWARD, STANTON, THAYER, THURSTON, WAYNE, YORK
West-Nebraska	2,054,758	98	ADAMS, ARTHUR, BANNER, BLAINE, BOX BUTTE, BOYD, BROWN, BUFFALO CHASE, CHERRY, CHEYENNE, CUSTER, DAWES, DAWSON, DEUEL, DUNDY FRANKLIN, FRONTIER, FURNAS, GARDEN, GARFIELD, GOSPER, GRANT GREELEY, HALL, HARLAN, HAYES, HITCHCOCK, HOLT, HOOKER, HOWARD KEARNEY, KEITH, KEYA PAHA, KIMBALL, LINCOLN, LOGAN, LOUP MCPHERSON, MORRILL, PERKINS, PHELPS, RED WILLOW, ROCK SCOTTS BLUFF, SHERIDAN, SHERMAN, SIOUX, THOMAS, VALLEY WEBSTER, WHEELER
ST. LOUIS, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area	7,134,361	255	BOONE, FRANKLIN, JEFFERSON, ST CHARLES, ST LOUIS, ST LOUIS
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area	4,226,671	215	ADAIR, AUDRAIN, BOLLINGER, BUTLER, CALLAWAY, CAPE GIRARDEAU CARTER, CLARK, COLE, COOPER, CRAWFORD, DENT, DOUGLAS, DUNKLIN GASCONADE, HOWARD, HOWELL, IRON, KNOX, LEWIS, LINCOLN, MACON MADISON, MARIES, MARION, MISSISSIPPI, MONITEAU, MONROE MONTGOMERY, NEW MADRID, OREGON, OSAGE, OZARK, PEMISCOT, PERRY PHELPS, PIKE, RALLS, RANDOLPH, REYNOLDS, RIPLEY STE GENEVIEVE, ST FRANCOIS, SCHUYLER, SCOTLAND, SCOTT SHANNON, SHELBY, STODDARD, TEXAS, WARREN, WASHINGTON, WAYNE WRIGHT
HUD REGION VIII (DENVER)			
DENVER, COLORADO REGIONAL OFFICE			
METROPOLITAN ALLOCATION AREAS			
DENVER COLORADO PMSA	5,070,577	186	ADAMS, ARAPAHOE, DENVER, DOUGLAS, JEFFERSON
COLORADO NORTHERN FRONT RANGE METRO	2,013,658	74	BOULDER, LARIMER, WELD
COLORADO SOUTHERN FRONT RANGE METRO	1,483,162	55	EL PASO, PUEBLO
MONTANA METRO AREAS	645,195	24	YELLOWSTONE, CASCADE
NORTH DAKOTA METRO AREAS	782,475	30	BURLEIGH, MORTON, CASS, GRAND FORKS
SOUTH DAKOTA METRO AREAS	524,000	19	PENNINGTON, MINNEHAHA
UTAH METRO AREAS	3,647,239	135	UTAH, DAVIS, SALT LAKE, WEBER
WYOMING METRO AREAS	334,888	12	NATRONA, LARAMIE
NONMETROPOLITAN ALLOCATION AREAS			
COLORADO NONMETRO AREA	3,550,134	133	ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CHEYENNE, CLEAR CREEK CONEJOS, COSTILLA, CROWLEY, CUSTER, DELTA, DOLORES, EAGLE ELBERT, FREMONT, GARFIELD, GILPIN, GRAND, GUNNISON, HINSDALE HUERFANO, JACKSON, KIOWA, KIT CARSON, LAKE, LA PLATA LAS ANIMAS, LINCOLN, LOGAN, MESA, MINERAL, MOFFAT, MONTEZUMA MONTROSE, MORGAN, OTERO, OURAY, PARK, PHILLIPS, PITKIN PROWERS, RIO BLANCO, RIO GRANDE, ROUTT, SAGUACHE, SAN JUAN SAN MIGUEL, SEDGWICK, SUMMIT, TELLER, WASHINGTON, YUMA

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
MONTANA NONMETRO AREA	4,165,546	157	BEAVERHEAD, BIG HORN, BLAINE, BROADWATER, CARBON, CARTER CHOUTEAU, CUSTER, DANIELS, DAWSON, ANACONDA-DEER LODGE COUN FALLON, FERGUS, FLATHEAD, GALLATIN, GARFIELD, GLACIER GOLDEN VALLEY, GRANITE, HILL, JEFFERSON, JUDITH BASIN, LAKE LEWIS AND CLARK, LIBERTY, LINCOLN, MCCONE, MADISON, MEAGHER MINERAL, MISSOULA, MUSSELSHELL, PARK, PETROLEUM, PHILLIPS PONDERA, POWDER RIVER, POWELL, PRAIRIE, RAVALLI, RICHLAND ROOSEVELT, ROSEBUD, SANDERS, SHERIDAN, BUTTE-SILVER BOW STILLWATER, SWEET GRASS, TETON, TOOLE, TREASURE, VALLEY WHEATLAND, WIBAUX, YELLOWSTONE NATIONAL PAR
NORTH DAKOTA NONMETRO AREA	2,088,960	81	ADAMS, BARNES, BENSON, BILLINGS, BOTTINEAU, BOWMAN, BURKE CAVALIER, DICKEY, DIVIDE, DUNN, EDDY, EMMONS, FOSTER GOLDEN VALLEY, GRANT, GRIGGS, HETTINGER, KIDDER, LA MOURE LOGAN, MCHENRY, MCINTOSH, MCKENZIE, MCLEAN, MERCER, MOUNTRAIL NELSON, OLIVER, PEMBINA, PIERCE, RAMSEY, RANSOM, RENVILLE RICHLAND, ROLETTE, SARGENT, SHERIDAN, SIOUX, SLOPE, STARK STEELE, STUTSMAN, TOWNER, TRAILL, WALSH, WARD, WELLS, WILLIAMS
SOUTH DAKOTA NONMETRO AREA	3,293,454	132	AURORA, BEADLE, BENNETT, BON HOMME, BROOKINGS, BROWN, BRULE BUFFALO, BUTTE, CAMPBELL, CHARLES MIX, CLARK, CLAY, CODINGTON CORSON, CUSTER, DAVISON, DAY, DEUEL, DEWEY, DOUGLAS, EDMUNDS FALL RIVER, FAULK, GRANT, GREGORY, HAAKON, HAMLIN, HAND HANSON, HARDING, HUGHES, HUTCHINSON, HYDE, JACKSON, JERAULD JONES, KINGSBURY, LAKE, LAWRENCE, LINCOLN, LYMAN, MCCOOK MCPHERSON, MARSHALL, MEADE, MELLETTE, MINER, MOODY, PERKINS POTTER, ROBERTS, SANBORN, SHANNON, SPINK, STANLEY, SULLY, TODD TRIPP, TURNER, UNION, WALWORTH, YANKTON, ZIEBACH
UTAH NONMETRO AREA	1,485,893	58	BEAVER, BOX ELDER, CACHE, CARBON, DAGGETT, DUCHESNE, EMERY GARFIELD, GRAND, IRON, JUAB, KANE, MILLARD, MORGAN, PIUTE RICH, SAN JUAN, SANPETE, SEVIER, SUMMIT, TOOELE, UINTAH WASATCH, WASHINGTON, WAYNE
WYOMING NONMETRO AREA	1,757,456	71	ALBANY, BIG HORN, CAMPBELL, CARBON, CONVERSE, CROOK, FREMONT GOSHEN, HOT SPRINGS, JOHNSON, LINCOLN, NIOBRARA, PARK, PLATTE SHERIDAN, SUBLETTE, SWEETWATER, TETON, UINTA, WASHAKIE, WESTON
HUD REGION IX (SAN FRANCISCO)			
HONOLULU, HAWAII OFFICE			
METROPOLITAN ALLOCATION AREAS			
HONOLULU, HI MSA	5,563,066	136	HONOLULU
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	4,593,039	114	HAWAII, KAUAI, MAUI, GUAM
LOS ANGELES, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Los Angeles County, CA	90,221,623	2096	LOS ANGELES
Orange County, CA	12,082,065	281	ORANGE
Riverside and San Bernardino Counties, CA	8,835,678	206	RIVERSIDE, SAN BERNARDINO
Kern-Ventura-Santa Barbara Counties, CA	8,680,398	202	KERN, VENTURA, SANTA BARBARA
San Diego County, CA	15,365,454	357	SAN DIEGO
NONMETROPOLITAN ALLOCATION AREAS			
S.Luis Obispo-Imperial-Inyo-Mono Counties, CA	4,140,923	115	SAN LUIS OBISPO, IMPERIAL, INYO, MONO
PHOENIX, ARIZONA OFFICE			

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ARIZONA	8,058,483	241	MARICOPA, PIMA
NONMETROPLITAN ALLOCATION AREAS			
NONMETROPOLITAN ARIZONA ALLOCATION AREA EAST	2,008,504	73	APACHE, COCHISE, GILA, GRAHAM, GREENLEE, PINAL, SANTA CRUZ
NONMETROPOLITAN ARIZONA ALLOCATION AREA WEST	2,006,122	74	COCONINO, MOHAVE, NAVAJO, YAVAPAI, YUMA, LA PAZ
SACRAMENTO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,585,059	117	BUTTE, SHASTA, SAN JOAQUIN, SUTTER, YUBA
METROPOLITAN ALLOCATION AREA 2	4,814,399	157	EL DORADO, PLACER, SACRAMENTO, YOLO
SAN FRANCISCO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	8,617,422	192	FRESNO, MERCED, STANISLAUS, TULARE
METROPOLITAN ALLOCATION AREA 2	16,063,041	358	ALAMEDA, CONTRA COSTA
METROPOLITAN ALLOCATION AREA 3	20,240,408	450	MARIN, SAN FRANCISCO, SAN MATEO, ALPINE, AMADOR, CALAVERAS COLUSA, GLENN, LASSEN, MODOC, NEVADA, PLUMAS, SIERRA, SISKIYOU TEHAMA, TRINITY, TUOLUMNE
METROPOLITAN ALLOCATION AREA 4	13,224,242	294	MONTEREY, SANTA CLARA, SANTA CRUZ
METROPOLITAN ALLOCATION AREA 5	4,501,363	100	SONOMA, NAPA, SOLANO
METROPOLITAN ALLOCATION AREA 6	4,462,221	99	CLARK, WASHOE
NONMETROPLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA (SF&SAC)	8,846,630	283	CHURCHILL, DOUGLAS, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER LINCOLN, LYON, MINERAL, NYE, PERSHING, STOREY, WHITE PINE CARSON CITY, DEL NORTE, HUMBOLDT, KINGS, LAKE, MADERA MARIPOSA, MENDOCINO, SAN BENITO
HUD REGION X (SEATTLE)			
ANCHORAGE, ALASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Anchorage	609,997	19	ANCHORAGE BOROUGH
NONMETROPLITAN ALLOCATION AREAS			
Nonmetro Alaska	2,504,937	62	ALEUTIAN ISLANDS CENSUS, BETHEL CENSUS AREA BRISTOL BAY BOROUGH, DILLINGHAM CENSUS AREA FAIRBANKS NORTH STAR BOR, HAINES BOROUGH, JUNEAU BOROUGH KENAI PENINSULA BOROUGH, KETCHIKAN GATEWAY BOROUG KOBUK CENSUS AREA, KODIAK ISLAND BOROUGH MATANUSKA-SUSITNA BOROUG, NOME CENSUS AREA NORTH SLOPE BOROUGH, PRINCE OF WALES-OUTER KE, SITKA BOROUGH SKAGWAY-YAKUTAT-ANGOON C, SOUTHEAST FAIRBANKS CENS VALDEZ-CORDOVA CENSUS AR, WADE HAMPTON CENSUS AREA WRANGELL-PETERSBURG CENS, YUKON-KOYUKUK CENSUS ARE
PORTLAND, OREGON OFFICE			
METROPOLITAN ALLOCATION AREAS			
Portland/Vancouver	6,393,927	216	CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL, CLARK
Ida-Ore Metro	3,206,615	109	ADA, JACKSON, LANE, MARION, POLK
NONMETROPLITAN ALLOCATION AREAS			
Idaho Nonmetro	4,974,729	175	ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU CASSIA, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT GEM, GOODING, IDAHO, JEFFERSON, JEROME, KOOTENAI, LATAH, LEMHI LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE PAYETTE, POWER, SHOSHONE, TETON, TWIN FALLS, VALLEY WASHINGTON
Eastern Oregon	2,639,564	92	KLICKITAT, SKAMANIA, BAKER, CROOK, DESCHUTES, GILLIAM, GRANT HARNEY, HOOD RIVER, JEFFERSON, KLAMATH, LAKE, MALHEUR, MORROW SHERMAN, UMATILLA, UNION, WALLOWA, WASCO, WHEELER
Western Oregon	4,214,479	150	BENTON, CLATSOP, COLUMBIA, COOS, CURRY, DOUGLAS, JOSEPHINE LINCOLN, LINN, TILLAMOOK
SEATTLE, WASHINGTON OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO-1	7,788,482	247	KING, SNOHOMISH
METRO-2	3,830,206	122	PIERCE, WHATCOM, KITSAP, THURSTON
METRO-3	3,127,971	99	SPOKANE, BENTON, FRANKLIN, YAKIMA
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO-1	3,080,344	112	CLALLAM, COWLITZ, GRAYS HARBOR, ISLAND, JEFFERSON, LEWIS MASON, PACIFIC, SAN JUAN, SKAGIT, WAHKIAKUM
NONMETRO-2	3,234,345	118	ADAMS, ASOTIN, CHELAN, COLUMBIA, DOUGLAS, FERRY, GARFIELD GRANT, KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, STEVENS WALLA WALLA, WHITMAN

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May 29, 1991

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Pre-Foreclosure Sale Demonstration Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3222; FR-2714-N-01]

Pre-Foreclosure Sale Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the Department's intent to conduct a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of saving the Department money and of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages.

DATES: Effective date: August 19, 1991. Comment due date: July 29, 1991.

In accordance with section 470 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983), commencement of this demonstration program will await the conclusion of a 60-day public comment period during which full consideration will be given to all public comments received. After the close of the comment period, another Notice will be published setting forth revised requirements and procedures if public comments received indicate that such changes are necessary.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084).

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Director, Single Family Servicing Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-3080. A telecommunications device for deaf persons (TDD) is available at (202) 708-1112. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**. The public reporting burden for the collection of information requirements contained in this Notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided later in this Notice under *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Background

Sometimes, a mortgagor must confront the twin realities of not being able to meet his or her mortgage obligation *and* static or declining property values. Such a situation makes it virtually impossible for a financially distressed mortgagor to sell the home and, using the proceeds, to fully discharge the mortgage debt. Foreclosure of the mortgage is often the method of resolving these difficulties.

Over the past few years, a considerable amount of interest has been expressed by mortgagors and real estate agents in a transaction known as the "pre-foreclosure sale." In a successful pre-foreclosure sale, neither foreclosure nor conveyance of the property back to the Department occurs. A third party buys the home from a defaulting mortgagor at fair market value (with certain adjustments, as approved by the Secretary), which is less than the owner's outstanding indebtedness at the time of sale. Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) amended section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) to authorize HUD to pay a claim to a lender equal to the difference between the fair market sale price and the outstanding indebtedness. A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure.

This Notice

The Department has decided to conduct a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales; and to obtain feedback from participating offices and the public, so that appropriate program criteria and procedures can be formulated. Prior to designing the program, the Department calculated the estimated savings from the anticipated level of participation in this demonstration. The savings to HUD amounted to approximately $17 million. The program expands the options available to financially distressed mortgagors and does not adversely affect any mortgagor rights or interests under existing FHA-insured loan servicing regulations.

Upon publication of this Notice, the public is invited to comment during a 60-day comment period on policies, procedures, estimated savings and other aspects of the proposed program. At the conclusion of this period, comments received will be reviewed and, if necessary, another Notice will be published setting forth any changes in requirements necessary to conduct this initial demonstration. If no comments are received, or if the comments received do not indicate that changes are needed in these initially established criteria and procedures, the demonstration will take effect and begin on August 19, 1991. For purposes of initiating and evaluating demonstration, certain procedures and eligibility

criteria will be adoped, as discussed below.

The demonstration program, which will last 6 to 12 months, will be conducted in five local HUD Offices: Houston, Denver, Phoenix, Atlanta, and Milwaukee. This selection includes three offices in long-term "soft" real estate markets, as well as two other offices in more typical markets.

Eligibility Criteria

In order to be eligible for the pre-foreclosure sale program, a mortgagor must:

(1) Be an owner-occupant in a single family unit with a mortgage under sections 203(b), 221(d)(2), 234(c), 235, or 245 of the National Housing Act (12 U.S.C. 1709, 17151, 1715y, 1715z, or 1715z–10);

(2) Have an account in default; i.e., with three installments due and unpaid; (The default must not be the result of the mortgagor's willful abuse of the single family mortgage program.); and

(3) Have been aware of the assignment program, as discussed below under Notification of Program, and have been either turned down for it by HUD, or have decided not to apply for it.

In addition, those mortgagors who are small investors with only one FHA-insured mortgage (e.g., a former owner-occupant who now rents out his/her property) will be considered for eligibility under the Pre-Foreclosure Sale Program. Under no circumstances, however, will the program be made available to "walkaways" who have abandoned their mortgage obligations despite their continued ability to pay. Mortgagors determined to be eligible for, and who participate in, pre-foreclosure sales will *not* be pursued for deficiency judgments by the Department.

Use of Contractors ("Evaluators") To Implement Program

The Department intends to utilize the services of one or more contractors, called "Evaluators," to perform many crucial steps in the Pre-Foreclosure Sale Program. Because five local HUD Offices are to be included in the demonstration, there may be as many as five Evaluators. (For purposes of comparison, the Department reserves the option to have staff in one of the five local HUD offices perform these tasks instead of an Evaluator.)

The competition preceding selection of Evaluators will be open to both non-profit and for-profit organizations that can demonstrate their facility in providing housing counseling services, and in guiding real estate transactions. The Evaluators will commence action by determining which of the mortgagors, who express an interest in pre-foreclosure sales, actually meet the program's eligibility criteria.

Justification of Cash Incentives

The Department has decided to incorporate the payment of certain cash incentives to mortgagors who qualify for the program and whose participation ultimately culminates in a consummated pre-foreclosure sale, or, alternatively, in a deed-in-lieu of foreclosure. HUD is aware that other mortgage insurers and financial institutions have not authorized the retention of a portion of sale proceeds and do not otherwise reward mortgagors who engage in a pre-foreclosure sale or deed-in-lieu of foreclosure, beyond the fact that these results necessarily preclude the possibility of foreclosure. However, the proportion of pre-foreclosure sales occurring in these other agencies and institutions among defaulting mortgagors is generally much lower than the level of participation hoped for in HUD's upcoming program.

Furthermore, although the Department acknowledges that the avoidance of a foreclosure on their credit records is a prime motivation for mortgagors to attempt to dispose of their properties via pre-foreclosure sales, HUD has a number of other reasons to substantiate offering monetary incentives to program participants.

—HUD has an underlying objective to maximize the number of interested participants in pre-foreclosure sales, because of the estimated savings to the Department, in the aggregate, that these transactions represent. We estimate that the program incentives, when paid out, will be offset by the savings in pre- and post-acquisition costs for the properties affected by participation in the pre-foreclosure sale program.

—Program participants must make considerable efforts and undergo significant inconvenience is seeking out third-party buyers, making the property presentable, and allowing the public access to their home as they attempt to reach an approved transaction before the foreclosure deadline has run.

—Mortgagors can request deeds-in-lieu of foreclosure without first attempting to execute pre-foreclosure sales and might request deeds-in-lieu of foreclosure rather than the pre-foreclosure sale option, when they become fully apprised of the efforts involved in the pre-foreclosure sale and the concomitant tax implications. If a mortgagor meets prevailing criteria and the mortgagee is willing to cooperate, a deed-in-lieu of foreclosure can occur. This would benefit the mortgagor but would represent only modest savings to the Department. Therefore, it is in HUD's interest to make the pre-foreclosure sale option as attractive as possible in order to maximize the number of program participants.

—The provision of supplemental incentives for expedited pre-foreclosure sales occurring within three or four months' time represents a small portion of the estimated savings to the Department of interest that would otherwise have to be paid to mortgagees as part of the insurance contract.

Deed-In-Lieu of Foreclosure as a Program Feature

At the time he or she applies to participate in the Pre-Foreclosure Sale Program, the mortgagor will certify whether there are encumbrances on the mortgage, or whether there are title problems of which he or she is aware. The Evaluator may, in its discretion, authorize a title search at any time during the mortgagor's participation in the program. The existence of encumbrances or title problems may preclude or result in a refusal to permit either a pre-foreclosure sale or a deed-in-lieu. For those mortgagors whose mortgages do qualify under these criteria, but who, despite a good faith effort (as determined by the Evaluator), do not consummate a pre-foreclosure sale, the program will arrange the acceptance of a deed-in-lieu of foreclosure by the mortgagee, if foreclosure is imminent upon the failure of the participant to execute a pre-foreclosure sale. This action will leave the mortgagor without a foreclosure on his or her credit history.

Notification of Program

HUD Headquarters will circulate an Information Sheet on pre-foreclosure sales among mortgagees and housing counseling agencies, and the mortgagees and housing counseling agencies will be encouraged to distribute the document to mortgagors believed to be interested in, and possibly qualified for, the Pre-Foreclosure Sale Program. The literature will contain, for each of the five demonstration areas, a toll-free number that mortgagors can call for answers to questions about pre-foreclosure sales and information regarding how they can contact program Evaluators.

Mortgagees will be required to notify mortgagors in the geographic areas covered by the demonstration of the pre-foreclosure sale option when the mortgagors lose the right to apply for

assignment of their mortgages. When an assignment application is terminated before a final decision is made because of a lack of timely responsiveness by the mortgagor, or when an assignment applicant receives a negative final decisions, this notification will be performed by the local HUD Office.

Initiating the Pre-foreclosure Sale Option

Once a mortgagor contacts an Evaluator and is determined to be eligible to pursue a pre-foreclosure sale, and is so notified by the Evaluator, the mortgagor is then authorized to seek out a third-party purchaser. The Evaluator will also refer the mortgagor to one or more qualified real estate brokers in an attempt to market the property within the established time and price guidelines. (See "Other Provisions," paragraphs (1) and (4).) These brokers will be prohibited from sharing a business interest with the Evaluator. HUD's Information Sheet will explain that while mortgagors are free to try to sell their properties themselves, the Department recommends that a broker be retained because of the tight time constraints involved in finding a buyer and consummating the pre-foreclosure sale.

An "As-Is" appraisal will be ordered by the Evaluator from the local HUD Office, which will assign a staff appraiser, if possible, or a free-panel (independent) appraiser to conduct the appraisal. Any costs for the property appraisal will be borne by the local HUD Office. Copies of the appraisal will be conveyed to the Evaluator, who will forward one copy of the appraisal to the real estate broker, or to the mortgagor, as applicable.

Homeownership Counseling Responsibilities

Before a particular pre-foreclosure sale transaction can be approved by the Evaluator, either the Evaluator or the local HUD Office or a HUD-approved counseling agency located in the mortgagor's geographic area will do the following:

(1) Provide substantive "homeownership counseling" to mortgagors considering the pre-foreclosure sale option. This will include explaining the alternatives available to the mortgagor, including a payment plan negotiated with the lender, foreclosure and deed-in-lieu of foreclosure, the assignment program (if still available), and changes in household income or size that might have a bearing on the ability of the mortgagor to retain ownership of the property.

(2) Advise mortgagors considering the pursuit of a pre-foreclosure sale that they may wish to contact a financial or tax counselor to assess the specific tax consequences to them of a pre-foreclosure sale.

(3) Assist in executing certifications for the mortgagors to sign before the local HUD Office is asked to approve the actual pre-foreclosure sale. These certifications shall include statements that:

(a) Homeownership counseling has been received;

(b) The proposed pre-foreclosure sale is an "arm's length" transaction between the mortgagor and would-be purchaser; and

(c) If the mortgagor has not made application for mortgage assignment, that the assignment program has been explained to him and that he desires to waive any right he has to apply for the program arising from his present mortgage default.

Responsibilities of the Real Estate Broker Or the Mortgagor's Attorney

The real estate broker or the mortgagor's attorney should forward to the Evaluator a copy of the contract of sale made conditional upon HUD's approval (including sales commission), and the necessary certifications (if they are in the broker's or attorney's possession) that they have been signed by the mortgagor. The Evaluator will review the package for approval and render a decision within ten (10) days of receiving the completed package.

Monitoring Responsibilities of HUD Personnel

The pre-screening by the Evaluator of the mortgagor's eligibility to pursue a pre-foreclosure sale, as well as the Evaluator's final approval of a proposed sale, shall be reviewed by the appropriate HUD personnel. During the Demonstration, the reviews may occur at any time, and will be performed on-site by Regional or Headquarters personnel. (There will also be reviews of the Evaluators' monthly reports.) Actions taken by local HUD Office staff during the demonstration (e.g., referring mortgagors to the program Evaluators; provision of property appraisals; etc.) will be reviewed by Regional or Headquarters staff, to ensure that program criteria and other procedures are being followed. Mortgagee cooperation with Evaluators and local HUD offices in pursuit of pre-foreclosure sales, will be evaluated on-site during mortgagee reviews conducted by HUD staff.

The Department will also conduct an overall program review at the conclusion of the Demonstration. The Office of Housing will conduct this evaluation in cooperation with other policy and research arms of HUD. The review will include, but is not limited to:

(a) Determining the ratio of successful outcomes to total program participants;

(b) Determining the cost to HUD per successful program participant, relative to the cost of customary foreclosure and related conveyance-claim proceedings;

(c) Producing a comparative analysis of the cost and performance of the various contractors engaged by the Department to administer the Demonstration in four of the five locations, which will also include the cost and performance of the fifth HUD office specifically engaged in program administration;

(d) Determining the appropriateness of eligibility criteria and other program procedures utilized during the Demonstration, with an eye toward making any necessary adjustments to guidelines pertaining to program costs, cash incentives, time deadlines, and quantitative guidelines governing the pre-foreclosure sales transaction.

If, based on its analysis of the Demonstration of the Pre-foreclosure Sales option, the Department determines that the program is workable and cost-beneficial, implementing regulations will be drafted and Pre-foreclosure Sales will subsequently be inaugurated as a Department-wide program.

Responsibilities of Mortgagees

Mortgagees will be responsible for:

(1) Correct notification procedures (in particular, sending appropriate notices, and contacting mortgagors in only those five local HUD Office jurisdictions covered by the demonstration;

(2) Pre-screening of mortgagors to participate in the pre-foreclosure sale program after assignment application is turned down or the opportunity for assignment has been waived or has expired;

(3) Overall responsiveness and timeliness of the servicing staff to mortgagors who appear to be interested in, or qualified for, the pre-foreclosure sale program; and

(4) Overall mortgagee cooperation with all aspects of the program.

Compensation

Mortgagors who qualify for the pre-foreclosure sales option and who arrange a sale that is approved by the Evaluator, and subsequently completed (goes to closing), shall be able to retain from the sales proceeds before disbursement to the mortgagee, the base

amount of $1,500 (one thousand five hundred dollars).

In addition to the base amount, the mortgagor will be able to retain the following sums from the proceeds of sale if these conditions are met:

If the closing of an approved pre-foreclosure sale occurs within three (3) months of the commencement of the mortgagor's participation in the pre-foreclosure sales program (i.e., from the time the mortgagor is found eligible to participate in the program), the sum of $500 (five hundred dollars).

Alternatively, if the closing of an approved pre-foreclosure sale occurs within four (4) months of the commencement of the mortgagor's participation in the program, the sum of $200 (two hundred dollars).

In the event that net sale proceeds exceed the appraised market value of the property, the Evaluator will authorize the mortgagor to retain from net proceeds an incentive equal to 50% of the excess amount, if by doing so the resulting incentive would be greater than the aforementioned $1500 base amount.

If, after a good faith effort—as determined by the Evaluator—a property does not sell under the Pre-Foreclosure Sale Program (i.e, does not result in a signed contract of sale within three months, or a closing within five months of commencement of participation), the Evaluator will authorize a title search of the participant's mortgage for title problems and encumbrances (if it has not done so already). If problems are not discovered, the Evaluator will forward a positive recommendation regarding the acceptance of a deed-in-lieu of foreclosure to the mortgagee (copy to the local HUD office). The mortgagee shall then follow established instructions for acceptance of a deed-in-lieu of foreclosure. If the mortgagee accepts a deed-in-lieu of foreclosure, the mortgagor will receive the sum of $500. This sum will be 100% reimbursable to the mortgagee through the FHA claims process.

Other Provisions

During the demonstration program, the following additional provisions will apply:

(1) The Evaluator will have the authority, on a case-by-case basis, to extend the customary program deadlines (three months for a signed contract of sale or five months to go to closing) if it determines that it would be in the best interest of the Department to do so.

(2) The Evaluator, in consultation with the local HUD office, will determine whether participating mortgagees are to be instructed to continue taking the necessary steps, up to but not including the actual initiation of foreclosure, while a program participant is seeking an appropriate third-party purchaser for his property.

(3) In determining the eligibility of a mortgagor to participate in the Pre-Foreclosure Sale Program, the Evaluator shall make a determination that the property's appraised value is at least 70% of the outstanding mortgage indebtedness at the time application is made for the program. In cases where the appraised value is less than 70% of the outstanding debt, the Evaluator must obtain local HUD Office approval to permit the mortgagor to engage in a pre-foreclosure sale.

(4) The offer to purchase the property should net HUD at least 90% of the appraised value of the property. However, the Evaluator may exercise discretion in cases where the bid is at least 90% of appraised value but the net to HUD is less than 90% of appraised value. Offers which do not reach the 90% level of appraised value, but which the Evaluator thinks should be accepted anyway, must have advance written approval of the local HUD Office.

(5) All sales contracts submitted for consideration by the pre-foreclosure sale program Evaluator shall contain a clause which provides that HUD approval (directly or through the Evaluator) is a pre-condition of the sale.

(6) Purchasers in approved pre-foreclosure sales may qualify for FHA mortgage insurance.

(7) Notwithstanding the provisions of regulation 24 CFR 203.402(f) regarding reimbursement of the mortgagee of foreclosure and acquisition costs via the claims process, the Pre-Foreclosure Sale Demonstration will establish appropriate guidelines for payment of such items as an expanded fee for securing a deed-in-lieu of foreclosure, and reimbursement for the discharge of certain junior liens in order to accommodate a pre-foreclosure sale. The experience during the demonstration will allow the Department to determine whether it is in its best interest to modify existing regulatory limits on such claim reimbursements within the context of pre-foreclosure sales.

The Closing of the Pre-Foreclosure Sale; Payment of Claims

Prior to closing the sale:

(1) The Evaluator will provide to the Closing Agent, or to the mortgagee responsible for providing the payoff statement, a list of those parties entitled to receive financial incentives and the amounts payable out of sale proceeds.

(2) The Closing Agent will calculate the net sale proceeds and communicate this data to the Evaluator, so that the Evaluator can ascertain that the actual terms of the transaction are in accordance with the proposed sale that the Evaluator had approved earlier.

If the Evaluator approves the transaction, and closing occurs, the Closing Agent will pay the incentives contained in the list previously provided by the Evaluator, and will send the net proceeds of sale and a form HUD–1 to the mortgagee, and a copy of the HUD–1 to the Evaluator.

Upon receipt of the payoff funds, the mortgagee will file a claim for the balance due to it under the terms of the contract for insurance. Reimbursement will be made under the provisons of section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628) and section 204(a) of the National Housing Act (12 U.S.C. 1710(a)).

For proposed pre-foreclosure sales that fall through, and for those instances where sales are sought without positive result, the mortgagee should file its claim under existing procedures for conveyance claims, after compliance with the last paragraph under the Section headed Compensation.

Note: If a mortgagee proceeds with steps leading to foreclosure against a mortgagor participating in the pre-foreclosure sale program, after being requested by the Evaluator to suspend temporarily such action, this action may be considered a lack of prudent mortgage servicing on the part of an FHA-approved mortgagee/servicer.)

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Information collection requirements. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN.—NOTICE OF LIMITED DEMONSTRATION OF PRE-FORECLOSURE SALES

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Disclosure by:					
Applicants	3,149	1	3,149	0.5	1,575
Mortgages	3,149	1	3,149	0.75	2,362
Certifications by Participants	2,362	1	2,362	0.5	1,181
Transactional:					
Applicants	2,362	1	2,362	0.6	1,417
Closings	2,008	1.15	2,309	1.0	2,309
Reporting:					
Periodic	5	12	60	1.5	90
Final/Overview	5	1	5	5.0	25
Total (annual) burden	13,040		13,396		8,959

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this demonstration does not have "federalism implications" because it does not have substantial direct effects on the States (including their potential subdivisions), or on the distribution of power and responsibilities among the various levels of government. The purpose of this demonstration is to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of saving the Department money and of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this demonstration does not have potential significant impact on family formation, maintenance, and general well-being because of the limited nature of it. It is to be conducted only through five HUD field offices in an attempt to gauge the demand for, and efficacy of, the pre-foreclosure sale transaction and to obtain feedback from the participating offices so that program criteria and procedures can be established through rule making if the demonstration is successful.

Dated: May 22, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

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federal register

Wednesday
May 29, 1991

Part VI

National Indian Gaming Commission

25 CFR Chapter III

Annual Fees Payable by Class II Gaming Operations; Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Annual Fees Payable by Class II Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing to establish Chapter III in title 25 of the Code of Federal Regulations (parts 500–599). This proposed rule provides direction and guidance to Class II gaming operations (activities) to enable them to compute and pay the annual fees as authorized by the Indian Gaming Regulatory Act (IGRA) beginning with calendar year 1991. With the publication of the final rule, the computation and payment of annual fees will be self-administered by each Class II gaming operation which is subject to the jurisdiction of the Commission.

DATES: Comments must be submitted on or before June 28, 1991.

ADDRESSES: Comments may be mailed to: Fee Regulation Comments, Suite 250, National Indian Gaming Commission, 1850 M Street, NW., Washington, DC 20036–5803, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch at 202/632–7003 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) which was enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is charged with, among other things, regulating Class II gaming on Indian lands. These regulations are being promulgated pursuant to IGRA.

The purpose of these regulations is to implement those portions of the IGRA that provide for the payment of fees by Class II gaming operations and for the collection and use of such fees by the Commission. Gaming operations are the economic entities that are licensed by a tribe, operate the games, receive the revenues, issue the prizes, and pay the expenses. Gaming operations may be operated by a tribe directly, by a management contractor, or in the case of certain grandfathered class II gaming operations, by an individual owner/operator.

These regulations provide for a system of fee assessment and payment that is self-administered by the Class II gaming operations. Briefly, the Commission adopts and communicates the assessment rates; the gaming operations apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission on a quarterly basis.

Annual fees are payable quarterly each calendar year based on the previous calendar year's assessable gross revenues from the Class II gaming operations. For this purpose, all revenues from gaming operations determined by the licensing tribe to be Class II are to be included.

The Commission will adopt preliminary annual fee rate(s) during the first quarter of each calendar year and final annual fee rate(s) for that year during the fourth quarter. Separate rates may be established for assessable gross revenue amounts under $1,500,000 (1st tier) and amounts over $1,500,000 (2nd tier). It is the present intent of the Commission but not a requirement that if different preliminary rates are used for each tier, the final rates will bear the same relationship to each other as the preliminary rates adopted earlier that year. The rates when adopted by the Commission will be published in the **Federal Register**.

The Commission anticipates that it will adopt a single preliminary fee rate of 1% for the first two quarters of the current calendar year. This rate may be modified during the third or fourth quarter when more information about the assessable gross revenue base becomes available. The last or final rate adopted will ultimately determine the amount of fees that will be paid during the year.

If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of gross revenues from self-regulated gaming operations. The definition of self-regulation and the requirements for obtaining a certificate of self-regulation will be added to the regulations in later rulemakings.

Gaming operations are to apply the rates adopted to their assessable gross revenues from the preceding calendar year to determine the amount of fees to be paid. The gaming operations are to report the amounts of assessable gross revenues, the fees to be paid, and their calculations to the Commission when they remit their quarterly payments. Remittances and reports are due no later than March 31, June 30, September 30, and December 31, of each calendar year, beginning in 1991. The Commission invites comments from interested parties as to whether a form should be provided for these reports.

Briefly, the computations required for each quarter are as follows:

(1) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(2) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in steps (1) and (2) above.

(4) Multiply the total obtained in (3) by the fraction representing the quarter for which the computation is being made: 1st quarter—¼; 2nd quarter—½ (⅔); 3rd quarter—¾; and 4th quarter—1 (¼).

(5) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in (4). (The "credits" to be deducted are computed by the Commission and the gaming operations are advised as to the amounts.)

(6) The amount computed in (5) is the amount to be remitted for the quarter.

Examples of the computations are included at § 500.14(b)(3) and (c)(7) of the regulations.

By basing the fees on the previous year's assessable gross revenues, sufficient time is provided to the gaming operations to finalize and submit adjusted numbers before the end of the third quarter of the calendar year. Furthermore, by providing for the adoption of preliminary and final rates by the Commission, sufficient time is provided the Commission to ascertain the assessable gross revenue base before finalizing the rates for each calendar year.

This rule will become effective for calendar year 1991 which means that all Class II gaming operations within the jurisdiction of the Commission will be required to begin self-administering the provisions of these regulations and will be required to begin reporting and paying any fees that are due to the Commission as soon as the regulation becomes final.

These regulations are applicable to all Class II gaming operations under the jurisdiction of the Commission. New gaming operations (with no gaming revenues generated in the previous calendar year) must file reports quarterly even though no fees will be due.

Penalties and interest may be assessed for failures to file quarterly statements and to pay fees when due;

and required approvals may be withheld, denied or revoked for failures to pay fees, penalties and interest. Procedures for appealing such adverse actions will be added to the regulations in separate rulemaking.

The IGRA provides that to the extent that revenues derived from fees imposed are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming operation on a pro-rata basis against such fees imposed for the succeeding year. This provision was rendered moot by the 1990 Interior and Related Agencies Appropriations Act (Pub. L. 101–121, 103 Stat. 718) which provided that fees remain available until used. Even without this provision, it is expected that all fees will be used because the annual budget of the Commission is expected to exceed the maximum amount of fees the Commission is authorized to collect. As a result, the only post calendar-year adjustments of fees paid that should be required will be the pro-rata credits to the gaming operations for payments in excess of the statutory maximum of $1,500,000.

Additional Information

The Commission has determined this document is not a major rule under E.O. 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographical regions. The rule will not have any adverse affects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, the Commission has tentatively determined that this rule will not have a significant impact on small business entities. However, because the Commission is new and may lack certain information that should be considered before making a final determination, the Commission invites interested persons to submit written comments regarding the impact of the proposed rule. The comments should be directed to the location identified in the **ADDRESSES** section of this preamble.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et. seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The Commission has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: May 23, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 500

Gaming, Indian lands.

National Indian Gaming Commission Regulations

For the reasons set out in the preamble, title 25 of the Code of Federal Regulations is proposed to be amended by adding a new chapter III consisting of parts 500–599.

CHAPTER III—NATIONAL INDIAN GAMING COMMISSION

PART 500—ANNUAL FEE REGULATIONS

PARTS 501–599—[RESERVED]

PART 500—ANNUAL FEE REGULATIONS

Sec.

500.14 Annual fees.

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

§ 500.14 Annual Fees.

(a) Each class II gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

(1) The Commission shall adopt preliminary rates for each calendar year during the first quarter of that year (or as soon thereafter as possible), and, if considered necessary, shall modify those rates during the second and third quarters of the calendar year.

(2) The Commission shall adopt final rates of fees for each calendar year during the fourth quarter of that year.

(3) The Commission shall publish the rates of fees in a notice in the **Federal Register.**

(4) The rates of fees imposed shall be—

(i) No less than 0.5 percent nor more than 2.5 percent of the first $1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each gaming operating regulated by the Commission.

(5) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of assessable gross revenues from self-regulated gaming operations. The .25 percent limit shall apply to the payments made during the first full calendar year following the year during which the certificate of self-regulation is issued.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amounts of money wagered, including admission fees, less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

(1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(2) The allowance for amortization of capital expenditures for structures shall not exceed 5% of the cost of structures in use throughout the year and 2½% of the cost of structures in use during only a part of the year.

(3) Example:

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees		5,000
		1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
	800,000	
Maximum allowance—		
$750,000×.05=	37,500	
50,000×.025=	1,250	38,750
Assessable gross revenues		$456,250

(c) Each Class II gaming operation regulated by the Commission shall file with the Commission quarterly a statement showing its assessable gross revenues for the previous calendar year.

(1) These quarterly statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These quarterly statements shall be filed no later than: March 31, June 30, September 30, and December 31, of each calendar year the Class II gaming operation is subject to the jurisdiction of

the Commission, beginning in 1991. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.

(3) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(4) The quarterly statements shall be transmitted to the Commission to arrive no later than the due date.

(5) Each Class II gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) or (a)(2) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during previous quarters.

(6) Each quarterly statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(6)(i) and (ii) of this section.

(iv) multiply the total obtained in paragraph (c)(6)(iii) of this section by the fraction representing the quarter for which the computation is being made: 1st quarter–¼; 2nd quarter–½ (¾); 3rd quarter–¾; and 4th quarter–1 (4/4).

(v) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in paragraph (c)(6)(iv) of this section.

(vi) The amount computed in paragraph (c)(6)(v) of this section is the amount to be remitted.

(7) Examples of fee computations follow:

(i) Example 1: Where a filing is made for the first quarter of the calendar year, the previous year's assessable gross revenues are $2,000,000, the fee rates adopted by the Commission are 2% on the first $1,500,000 and 4% on the remainder, and a credit of $2,000 is due from the previous year, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000×2%	$30,000
2nd tier revenues—500,000×4%	20,000
Annual fees	50,000
Multiply for fraction of year–¼ or	.25
Fees for first quarter	12,500
Deduct credit due	2,000
Amount to be remitted	$10,500

(ii) Example 2: Where a filing is being made for the third quarter, the previous year's assessable gross revenues are $5,000,000, the fee rates adopted by the Commission are 1% on the first $1,500,000 and 1.5% on the remainder, and $35,000 has already been remitted, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000×1%	$15,000
2nd tier revenues—3,500,000×1.5%	52,500
Annual fees	67,500
Multiply for fraction of year–¾ or	.75
Fees for first three quarters	50,625
Deduct amounts already remitted	[1] 35, 000
Amount to be remitted	$15,625

[1] This amount may be other than $33,750 ($67,500 x .50) because the assessable gross revenues may have been adjusted, the fee rate may have changed, a credit for the previous year's overpayment may have been received, or a clerical error may have been discovered.

(8) Quarterly statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1850 M Street, NW., Suite 250, Washington, DC 20036–5803.

Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

(9) The Commission may assess a penalty for failure to timely file a quarterly statement.

(10) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date (31 U.S.C. 3717).

(d) The total amount of all fees imposed during any fiscal year shall not exceed $1,500,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

(e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(f) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended (Pub. L. 101–121; 103 Stat. 718; 25 U.S.C. 2717a) to defray the costs of operations of the Commission.

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S. 248/Pub. L. 102-50

Niobrara Scenic River Designation Act of 1991. (May 24, 1991; 105 Stat. 254; 5 pages) Price: $1.00